

Panaji, 1st December, 2011 (Agrahayana 10, 1933)

SERIES II No. 35

OFFICIAL GAZETTE

GOVERNMENT OF GOA



PUBLISHED BY AUTHORITY

GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

Order

No. 8/69/2009-10/D.Aagri/296

Read: Order No. 8/69/2009-10/D.Aagri/222 dated 14-10-2009.

Government is pleased to extend the deputation of Shri Larry Barreto, Asstt. Agriculture Officer to the post of General Manager, Goa State Horticulture Corporation Ltd., Caranzalem, Tonca for a further period of one year (3rd year), with effect from 14-10-2011 (b.n.) to 13-10-2012.

The deputation of Shri Larry Barreto, shall be governed by standard terms and conditions of deputation issued by the Government from time to time.

This issues with the concurrence of the Government.

By order and in the name of the Governor of Goa.

S. S. P. Tendulkar, Director & ex officio Joint Secretary (Agriculture).

Tonca, Caranzalem, 22nd November, 2011.



Department of Co-operation

Office of the Asstt. Registrar of Co-operative Societies

Notification

No. 5-1311-2011/ARSZ/GEN

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act,

2001, "Shri Wagreshwar Sateri Self Help Group Co-op. Society Limited," Cacora, Quepem-Goa, is registered under code symbol No. GEN-(c)-16/South Goa/2011.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 12th July, 2011.

Certificate of Registration

"Shri Wagreshwar Sateri Self Help Group Co-op. Society Limited," Cacora, Quepem-Goa, has been registered on 12-7-2011 and it bears registration code symbol No. GEN-(c)-16/South Goa/2011 and it is classified as "General Society" under sub-classification No. 12-(c)-Other Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 12th July, 2011.

Notification

No. 5-1345-2011/ARSZ/GEN

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "Valakini Self Help Group Co-op. Society Limited, Dando, Sanguem-Goa, is registered under code symbol No. GEN-(c)-39/South Goa/2011.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 13th October, 2011.

Certificate of Registration

"Valakini Self Help Group Co-op. Society Limited," Dando, Sanguem-Goa, has been registered on 13-10-2011 and it bears registration code symbol No. GEN-(c)-39/South Goa/2011 and it is classified as "General Society" under

sub-classification No. 12-(c)-Other Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 13th October, 2011.

Notification

No. 5-1316-2011/ARSZ/GEN

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "The Jama Self Help Group Co-op Society Limited, Muslim Wada, Sanguem-Goa is registered under code symbol No. GEN-(c)-23/South -Goa/2011.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 11th August, 2011.

Certificate of Registration

"The Jama Self Help Group Co-op. Society Limited," Muslim Wada, Sanguem-Goa has been registered on 11-8-2011 and it bears registration code symbol No. GEN-(c)-23/South Goa/2011 and it is classified as "General Society" under sub-classification No. 12-(c)-Other Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 11th August, 2011.

Notification

No. 5-1313-2011/ARSZ/GEN

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "The Jai Shriram Self Help Group Co-op. Society Limited, Pontemol, Curchorem-Goa, is registered under code symbol No. GEN-(c)-21/South Goa/2011.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 10th August, 2011.

Certificate of Registration

"The Jai Shriram Self Help Group Co-op. Society Limited," Pontemol, Curchorem-Goa has been registered on 10-8-2011 and it bears registration code symbol No. GEN-(c)-21/South Goa/2011 and

it is classified as "General Society" under sub-classification No. 12-(c)-Other Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 10th August, 2011.

Notification

No. 5-1362-2011/ARSZ/GEN

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "The Garvoi Self Help Group Co-op. Society Limited, Balli, Quepem-Goa is registered under code symbol No. GEN-(c)-51/South Goa/2011.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 10th November, 2011.

Certificate of Registration

"The Garvoi Self Help Group Co-op. Society Limited," Balli, Quepem-Goa, has been registered on 10-11-2011 and it bears registration code symbol No. GEN-(c)-51/South Goa/2011 and it is classified as "General Society" under sub-classification No. 12-(c)-Other Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 10th November, 2011.

Notification

No. 5-1347-2011/ARSZ/GEN

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "Shri Sateri Self Help Group Co-op. Society Limited," Xelvona, Quepem-Goa is registered under code symbol No. GEN-(c)-36/South Goa/2011.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 13th October, 2011.

Certificate of Registration

"Shri Sateri Self Help Group Co-op. Society Limited," Xelvona, Quepem-Goa, has been registered on 13-10-2011 and it bears registration code symbol No. GEN-(c)-36/South Goa/2011 and it is classified as "General Society" under

sub-classification No. 12-(c)-Other Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 13th October, 2011.

Notification

No. 5-1309-2011/ARSZ/GEN

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "Om Sai Self Group Co-op. Society Limited, Amona, Quepem-Goa is registered under code symbol No. GEN-(c)-17/South Goa/2011.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 12th June, 2011.

Certificate of Registration

"Om Sai Self Help Group Co-op. Society Limited," Amona, Quepem-Goa has been registered on 12-6-2011 and it bears registration code symbol No. GEN-(c)-17/South Goa/2011 and it is classified as "General Society" under sub-classification No. 12-(c)-Other Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 12th June, 2011.

Notification

No. 5-1352-2011-ARSZ/GEN

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "The Vazreshwar Self Help Group Co-op. Society Limited, Balli, Quepem-Goa is registered under code symbol No. GEN-(c)-44/South Goa/2011.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 25th October, 2011.

Certificate of Registration

"The Vazreshwar Self Help Group Co-op. Society Limited," Balli, Quepem-Goa has been registered on 25-10-2011 and it bears registration code symbol No. GEN-(c)-44/South Goa/2011 and it is classified as "General Society" under

sub-classification No. 12-(c)-Other Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 25th October, 2011.

Notification

No. 5-1361-2011-ARSZ/HSG

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "The Imperial Avenue Co-operative Housing Society Limited," Fatorda, Margao-Goa is registered under code symbol No. HSG-(b)-818/South Goa/2011.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 4th November, 2011.

Certificate of Registration

"The Imperial Avenue Co-operative Housing Society Limited," Fatorda, Margao-Goa has been registered on 4-11-2011 and it bears registration code symbol No. HSG-(b)-818/South Goa/2011 and it is classified as "Housing Society" under sub-classification No. 7-(b)-Co-partnership Housing Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 4th November, 2011.

Department of Finance

Revenue & Control Division

Notification

No. 5/7/2008-Fin(R&C)

In exercise of the powers conferred by clause (i) of sub-section (1) of Section 25 of the Goa Tax on Entry of Goods Act, 2000 (Goa Act 14 of 2000) (hereinafter referred to as the "said Act"), the Government of Goa, being of the opinion that it is necessary in public interest so to do, hereby exempts the tax payable under the said Act in respect of the light motor vehicle Scorpio CRDe STD 7 STR Light of model SCOR CRD BS3 2WD TCI 7SF PHD, bearing engine No. BS84F31244 and chassis No. MA1TB2BSL82G61595 purchased by the Kadamba Transport Corporation Limited, Alto,

Porvorim, Goa from M/s. Mahindra and Mahindra Limited, Mumbai, vide invoice No. 0074460 dated 15-07-2008.

This Notification shall come into force with immediate effect.

By order and in the name of the Governor of Goa.

Ajit S. Pawasker, Under Secretary, Finance (R&C).
Porvorim, 22nd November, 2011.

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Department of Fisheries
Directorate of Fisheries

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Order

No. DF/ADMN/RIA/2006/Vol.I/6255

In pursuance of the Section 19(1) of the Right to Information Act, 2005, Shri Nandkishor V. Verlekar, Director of Fisheries shall be the First Appellate Authority in the Department of Fisheries, Panaji.

This supersedes this office earlier order No. E4(P)/6543/2006-07 dated 09-10-2006.

Nandkishor V. Verlekar, Director & ex officio Joint Secretary (Fisheries).

Panaji, 22nd November, 2011.

Order

No. DF/ADMN/RIA/2006/Vol.I/6256

In pursuance to clause 5 of the Right to Information Act, 2005 (hereinafter referred to as "the said Act"), the following Officer/Official are hereby appointed as Public Information Officer and Assistant Public Information Officer for the Directorate of Fisheries, to deal with the applications received from the public under the said Act.

Sr. No.	Designation of the Officer/Official	Designated as	Jurisdiction
1.	Dr. (Smt.) Shamila Monteiro, Dy. Director of Fisheries	Public Information Officer	State of Goa.
2.	Shri Mangal-murthi U. Pokle, Marketing Officer	Assistant Public Information Officer	State of Goa.

The Assistant Public Information Officer shall on receipt of the applications for information or appeal under the RTI Act, forward the same forthwith to the Public Information Officer, as required under sub-section (1) of Section 7.

The Public Information Officer shall on receipt of a request under Section 6, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fees as may be prescribed or reject the request for any of the reasons specified in Sections 8 and 9.

The above designated officers shall exercise and perform the powers/functions laid down under the RTI Act, 2005 with immediate effect.

The Director of Fisheries, will be the First Appellate Authority under this Act to hear the appeals against the decision of the Public Information Officer and Assistant Public Information Officer of the Department.

This supersedes this office earlier order No. E4(P)/2037/2005-06 dated 03-08-2005.

Nandakishor V. Verlekar, Director & ex officio Joint Secretary (Fisheries).

Panaji, 22nd November, 2011.

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Department of Labour

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Notification

No. 28/1/2011-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court, at Panaji-Goa on 28-09-2011 in reference No. IT/02/06 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).
Porvorim, 17th November, 2011.

THE LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI-GOA

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. IT/02/06

Shri Rauji Krishnanath Bhagat,
r/o Maviangted,
Sankhali-Goa. ... Workman/Party I
V/s

The Chairman,
The Sankhalim Urban
Co-operative Credit
Society Ltd.,
Gokulwadi,
Sanquelim-Goa. ... Employer/Party II

Party I/Workman represented by Adv. Shri A.
Kundaikar.

Party II/Employer represented by Adv. Shri P. J.
Kamat.

Panaji, Dated: 28-09-2011

AWARD

In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 17-01-2006 bearing No. 28/61/2002-LAB/90 referred the following dispute for adjudication by this Labour Court-II.

"(1) Whether the action of the management of M/s. Sankhali Urban Co-operative Credit Society Ltd., Sankhali, Goa, in terminating the services of Shri Rauji Krishnanath Bhagat, Jr. Clerk/Cashier, with effect from 07-08-2004, is legal and justified?"

(2) If not, to what relief, the Workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/02/06 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short 'Workman'), filed his statement of claim on 20-03-2006 at Exhibit-5. The facts of the case in brief as pleaded by the Workman are that he was appointed by the Employer/Party II (for short "Employer") as "Sub-Staff" w.e.f. 01-07-1992 and confirmed in the said post on 01-05-1993. He stated that he was promoted as Clerk w.e.f. 01-07-1996 on ad hoc basis vide order of the Employer dated 20-07-1996. He stated that at the time of his dismissal from service vide order dated 07-08-2004, he was posted at the Head Office of the Employer at Sankhalim and he was holding the post of Jr. Clerk. He stated that he was issued a charge-sheet dated 16-01-2004 alleging therein misappropriation and misutilization of money of the Employer.

He stated that he emphatically denied the charges levelled against him vide charge-sheet dated 16-01-2004 vide his reply dated 27-01-2004 and also demanded for the documents. He stated that the Employer, thereafter without holding any departmental enquiry against him, abruptly terminated his services vide order dated 07-08-2004. He submitted that since the Employer Society in its termination order issued to him alleged that his services were terminated for misappropriation, it was imperative on the Employer to conduct a departmental enquiry to prove the allegation of misappropriation. He stated that neither he was issued any notice prior to his termination of services nor paid any compensation in lieu of the notice. He stated that he was also not paid his terminal benefits and legal dues. He stated that he was dismissed from the services without holding any departmental enquiry. He therefore submitted that the said dismissal order is in flagrant violation of the principles of natural justice and hence it is bad-in-law. He submitted that he was not given any reasonable opportunity to defend the imputation. He submitted that the Employer was pleased to issue a circular dated 27-05-2000 in respect of the adherence of the provisions pertaining to the misconduct and indiscipline. He submitted that if there was any indiscipline pertaining to his conduct, the same would have been noted in accordance with the said circular. He stated that he was called upon and was directed to furnish an affidavit. He stated that he has sworn an affidavit dated 16-12-2003 before the notary at Bicholim in order to withdraw the maximum possible Provident Fund and also to encash his maximum leave as per the directions of the Employer. He denied that the said affidavit was submitted to admit the allegations. He stated that there is no question of admitting the charges by filing affidavit dated 16-12-2003 as he was issued a charge-sheet dated 16-01-2004 subsequently. He contended that the termination of his services is illegal, arbitrary, malafide and in violation of the principals of natural justice. He contended that the said dismissal order is untenable in the eyes of law as there was no departmental enquiry held before his termination nor he was paid one month salary in lieu of notice, termination benefit, gratuity and other consequential benefits attached to the post. He submitted that the termination of his services amounts to victimization and unfair labour practice. He submitted that he is unemployed from the date of termination of his services and finds difficult to sustain himself. He therefore

prayed that the termination order dated 07-08-2004 issued to him be held as illegal and he may be awarded with full back wages and continuity in services and consequential benefits attached to the post.

3. The Employer filed its written statement on 03-04-2006 at Exhibit-6 denying that the termination of services of the Workman is illegal and unjustified. The Employer at the outset, by way of preliminary objection stated that it is a Co-operative Society set up under the provisions of the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa. The Employer submitted that the reference made by the Government as to the termination of services of the Workman constitutes a dispute within the meaning of Section 91 of the said Act and in view of the above and the non obstante clause contained in the said Section 91, the reference itself is not maintainable and is liable to be rejected as such. The Employer further submitted that it is an establishment registered under the Goa, Daman & Diu, Shops & Establishment Act, 1973 and Rules, 1975 made thereunder. The Employer submitted that the said Goa, Daman & Diu Shops & Establishment Act, 1973 is a self contained Code incorporating all essential provisions relating to adjudication of a dispute, the relief to be given and the execution of the orders passed under the Goa, Daman & Diu Shops & Establishment Act, 1973 and the rules made thereunder. The Employer submitted that the said Goa, Daman & Diu Shops & Establishment Act, 1973 and the rules made thereunder prevails over the I. D. Act, 1947 being a self contained later enactment assented by the President of India. The Employer further contended that it is not an "Industry" as defined u/s 2 (j) of the I. D. Act, 1947.

4. The Employer however admitted that the Workman was appointed as a Sub-Staff initially w.e.f. 01-07-1992 and was confirmed as such w.e.f. 01-05-1993. The Employer further admits that thereafter the Workman was promoted as a "Jr. Clerk" from 01-01-1995 and was working as such till his termination. The Employer stated that its activities are similar to that of the bank and the employees working in the society are required to be honest. The Employer stated that the Workman was posted as a Jr. Clerk at its Valpoi Branch vide its transfer order No. SUCCS/1551/99-2000 dated 13-12-1999. The Employer stated that the Workman was performing the duties as a Cashier at Valpoi Branch. The Employer stated that while performing the duties of the

Cashier at Valpoi Branch between the period from 15-12-1999 till 21-07-2003, the Workman was found involved in receiving deposits in saving accounts from the account holders and not accounting for the same with the society and making fictitious entries in the Saving Pass Books of the depositors of the Society. The Employer stated that the Workman by his aforesaid act misappropriated a total amount of Rs. 4,21,015/- approximately during the said period. The Employer stated that when this fraud was detected by them, the Workman immediately admitted the same in writing on 21-07-2003 and forwarded the same admission dated 21-07-2003 to its head office on 22-07-2003. The Employer stated that the Workman was also suggested that he may be given loan to the extent of misappropriated amount and adjusts the said loan towards the payment of depositors and that he will repay the loan from his salary and other dues. The Employer stated that thereafter the Workman and his relatives approached them and made good an amount of Rs. 1,75,750/- and undertook to pay the balance amount. The Employer stated that the Workman and/or his relatives however did not make the payment of balance amount. The Employer stated that while the thorough investigation was pending, the Workman was brought to its Head Office vide Order No. SUCCS/HO/364/03-04 dated 25-07-2003. The Employer stated that after the scrutiny of all the papers pertaining to the fraud committed by the Workman, a first information report was made on 29-07-2004 at the Valpoi Police Station by the then Branch In-charge of its Valpoi Branch against the Workman and the investigation of the same is still pending. The Employer stated that on the admission of the misappropriation by the Workman vide his letters dated 21-07-2003, 29-07-2003 and an affidavit dated 16-12-2003 admitting the misappropriation of the amount of its Society, a charge-sheet bearing No. SUCCS/HO/772/03-04 dated 16-01-2004 was issued to the Workman in terms of Rule VIII - (1) of its Service Rules requiring him to explain satisfactorily as to why disciplinary action should not be taken against him. The Employer stated that the Workman was furnished with the statement of misappropriated amount at its Valpoi Branch. The Employer stated that the Workman vide his reply dated 27-01-2004 merely denied the charges and has not explained in detail the statement of accounts enclosed to the charge-sheet. The Employer stated that the Workman has merely stated that he is not in a position to comment anything on the statement of accounts since it is a complicated job where lot of documents are

involved. The Employer stated that in the meantime the Workman was kept at its Head Office as his presence was required in the investigation of the matter. The Employer stated that after thorough investigation in the matter, a complaint was filed against the Workman in the Valpoi Police Station for the misappropriation of the amount of Rs. 3,74,080/-. The Employer stated that thereafter it has placed all the documents namely charge-sheet dated 16-01-2004, reply of the Workman dated 27-01-2004, the complaint dated 29-07-2004 made to the Valpoi Police Station, admissions of the Workman dated 21-07-2003, 29-07-2003 and an affidavit dated 16-12-2003 in the Managing Committee Meeting held on 04-08-2004 and the Committee resolved to terminate the services of the Workman without notice with immediate effect as the first admission of the Workman was sufficient to terminate the services of the Workman in terms of Rule VIII-(1) of its Service Rules. The Employer submitted that the Rule VIII - (1) of its Service Rules does not provide for conducting any enquiry against the Workman if it is not satisfied with the explanation of the Workman to the charge-sheet. The Employer stated that on account of clear admission in writing given by the Workman on 21-07-2003, 29-07-2003 & 16-12-2003, the charge against the Workman stand proved on admission and the only question that remains to be considered was about the nature of punishment to be imposed on him. The Employer submitted that in a case where facts are admitted, the case reveals itself and is apparent on the face of record and in spite of opportunity no worthwhile explanation is forthcoming, no formal enquiry is necessary. The Employer stated that this is a case of misappropriation of funds of its depositors. The Employer stated that the misappropriation has been admitted by the Workman at the first instance by giving written admission on 21-07-2003, 29-07-2003 & an affidavit on 16-12-2003 and had paid an amount of Rs. 1,75,750/- out of misappropriated amount with the help of his relatives. The Employer submitted that the aforesaid facts are clear enough to show that the Workman had misappropriated its funds and the subsequent denial of the charges will have no effect at all and hence, its action in terminating the services of the Workman w.e.f. 07-08-2004 is legal, proper & just.

5. The Employer stated that it cannot repose any confidence in such an employee in its interest and its customers. The Employer admitted that the audit of the Society was done from 1996 till

2004 and no deficiency was noted or brought to the notice of the audit. The Employer stated that the Workman had manipulated its records in such a way that no irregularities could be noticed during the audit. The Employer stated that the misappropriation was detected when an account holder came to withdraw the money from his account based on the pass book entries furnished to the said account holder. The Employer stated that the amounts deposited were not credited to their respective ledgers with the society, but the individual accounts pass books contained the entries of the amount deposited and thus the audit could not trace the falsification and misappropriation during the audit. The Employer stated that since the Workman had admitted the charges of misappropriation at the first instance, it was not necessary to conduct any enquiry against him and it was the satisfaction of the Management that is sufficient to take action on the basis of admission. The Employer stated that the denial of the Workman to the charge-sheet of misconduct is an afterthought. The Employer admitted that no wages were paid to the Workman in lieu of notice as its Service Rule do not provide for giving one months notice or wages in lieu of notice nor provide for payment of any terminal benefits or the dues as alleged. The Employer denied that it was imperative on its part to hold a departmental enquiry before the dismissal of the Workman. The Employer also denied that the dismissal order issued to the Workman is bad-in-law and/or is in flagrant violation of principles of natural justice. The Employer denies the overall case of the Workman and prayed that the termination of the Workman be held as legal, just and proper.

6. Thereafter, the Workman filed his re-joinder at Exhibit-7 on 19-04-2006. The Workman, by way of his re-joinder denied each and every statement, averments and submissions made by the Employer vide their written statement filed in the present proceedings and reiterates and confirms the statements, averments and submissions made by him in his statement of claim. The Workman stated that the pleadings of the Employer are contradictory to the affidavit filed by Shri Raulu Shamba Sinai Amonkar. The Workman stated that he was advised to take loan and deposit the said loan for which he refused to comply the said illegal act. The Workman stated that the affidavit was obtained for withdrawing the maximum possible Provident Fund and also to encash the maximum leave. The Workman stated that the Employer intended to illegally receive the amount from the Workman by various coercive methods.

7. Based on the pleadings filed by the respective Parties, the Hon'ble Industrial Tribunal-cum-Labour Court has framed the following issues at Exb.-8.

1. *Whether the Workman/Party I proves that the termination of services w.e. f. 07-08-2004 by the Employer/Party II is illegal, unjustified and bad-in-law?*
2. *Whether the Workman/Party I proves that no departmental enquiry was held by the Employer/Party II prior to termination of his service?*
3. *Whether the Employer/Party II proves that the Order of Reference is not maintainable for the reasons stated in para 2 of Clauses (a), (b), (c) and (d) of the written statement?*
4. *Whether the Employer/Party II proves the Party I is involved in misappropriation of funds of the Employer/Party II during the period from 15-12-1999 to 21-07-2003 while working as a Cashier at Valpoi Branch?*
5. *Whether the Employer/Party II proves that the services of the Workman/Party I was terminated in terms of the Rule VIII (1) of the Service Rules of the Party II?*
6. *Whether the Party I is entitled for any relief?*
7. *What award?*

8. My findings to the aforesaid issues are as under:

Issue No. 1	: Affirmative
Issue No. 2	: Affirmative
Issue No. 3	: Negative
Issue No. 4	: Negative
Issue No. 5	: Negative
Issues No. 6 & 7	: As per final order.

Reasons:

Issue No. 3:

9. I am deciding the Issue No. 3 first prior to the Issues No. 1 & 2 as it touches the very jurisdiction of this Hon'ble Court.

I have heard the oral arguments of the Ld. Advocates appearing for the respective parties. Ld. Advocates appearing for the respective parties also filed their synopsis of written arguments.

10. Ld. Adv. Shri A. Kundaikar representing the Workman during the course of his oral arguments submitted that the Employer is a society, set up under the provisions of the Maharashtra Co-operative Societies Act, 1960. He submitted

that the present industrial dispute raised by the Workman is not a dispute as stated in Section 91 of the Maharashtra Co-operative Societies Act, 1960. He submitted that the I. D. Act, 1947 is a special statute containing provisions for the investigation and settlement of disputes and hence though the G. D. D. Shops and Establishment Act, 1973 and the rules, 1975 made thereunder contained some of the provisions, it does not prevail over the provisions of the Industrial Disputes Act, 1947. He submitted that the Employer Society is a Co-operative Society involved in the business of accepting the deposits and advancing the loans to the customers, similar to banking business and thus derived huge profits. He submitted that the Employer Society runs its business by engaging various employees. He submitted that thus the Employer Society runs its business systematically with the co-operation of the employees engaged by it and derives profits and hence it is an "Industry" as defined u/s 2 (j) of the I. D. Act, 1947.

11. On the contrary, Ld. Adv. P. J. Kamat representing the Employer Society during the course of his oral arguments submitted that the Employer is a Co-operative Society established under the provisions of the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa. He submitted that the alleged dispute pertaining to the termination of services of the Workman therefore constitutes a dispute within the meaning of Sec. 91 of the said Act. He submitted that in view of above and the non-obstant clause contained in Sec. 91 of the Maharashtra Co-operative Societies Act, 1960, the present dispute is not maintainable and consequently this Court has no jurisdiction to decide the same. He submitted that the G. D. D. Shops and Establishment Act, 1973 and the Rules, 1975 made thereunder is a self contained code incorporating all essential provisions relating to adjudication of a dispute, the relief to be given and the execution of the orders shall be passed under the G. D. D. Shops and Establishment Act, 1973 and the Rules, 1975 made thereunder. He finally submitted that the Employer Society is not an "Industry" as defined u/s 2 (j) of the I. D. Act, 1947.

I have carefully perused the entire records of the present case. I have also carefully considered the various oral as well as written legal submissions made by the Ld. advocates for the respective parties.

12. Admittedly, the Employer Society has not disputed the status of the Party I as "Workman" as defined u/s 2 (s) of the I. D. Act, 1947, however stated that it is not an "Industry" as defined u/s 2 (j) of the I. D. Act, 1947. The term "Industry" has been defined u/s 2 (j) of the I. D. Act, 1947 and it means "any systematic activity carried on by co-operation between an Employer and his Workmen (whether such Workmen are employed by such Employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—

- (i) Any capital has been invested for the purpose of carrying on such activity; or
- (ii) Such activity is carried on with a motive to make any gain or profit, and includes—
 - (a) Any activity of the Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);
 - (b) Any activity relating to the promotion of sales or business or both carried on by an establishment,
 But does not include—
 - (1) Any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation.— For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951; or

- (2) hospitals or dispensaries; or
- (3) educational, scientific, research or training institutions; or
- (4) institutions owned or managed by organization wholly or substantially engaged in any charitable, social or philanthropic service; or
- (5) khadi or village industries; or
- (6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space;

- (7) any domestic service; or
- (8) any activity, being a profession practiced by an individual or body of individuals, if the number of persons employed by an individual or body of individuals in relation to such profession is less than ten; or
- (9) any activity, being an activity carried on by co-operative society or club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.]”

13. In the case in hand, the Employer is a Co-operative Society running its business of accepting the deposits and advancing loans to the customers, similar to banking business. The evidence on record indicates that the Employer Society runs its business systematically with the co-operation of its employees engaged for that purpose and gains profit. In the absence of Co-operation of its employees, the Employer Society will not be able to run its business of accepting deposits and advancing loans to its customers. Hence, the Employer Society is an "Industry" within the meaning of Sec. 2 (j) of the I. D. Act, 1947. Consequently, any difference or dispute between its Workmen and the Employer is an 'Industrial Dispute' within the meaning of Sec. 2 (k) of the I. D. Act, 1947.

14. The G. D. D. Shops and Establishment Act, 1973 came into force in the State of Goa to provide for the regulations of the conditions of the work and employment in shops, commercial establishments, restaurants, theatres and other establishments and for matters connected therewith. Similarly, the Industrial Disputes Act, 1947 is a beneficial legislation which came into force with an object to make provision for the investigation and settlement of Industrial Disputes and for certain other purposes. The I. D. Act, 1947 is a special statute which contains provisions for investigation and settlement of Industrial Disputes of which provisions are lacking in the G. D. D. Shops and Establishment Act, 1973 and the Rules, 1975 made thereunder. Thus, the objects of both the acts are different from each other. There is nothing in the G. D. D. Shops & Establishment Act, 1973 and the rules made thereunder which prohibits any of the aggrieved parties to raise an Industrial Dispute under the I. D. Act, 1947. Hence, the contention of the Employer that the Shops Act is a self contained code incorporating all essential provisions relating to adjudication of a dispute, the

relief to be given and the execution of the orders to be passed under the G. D. D. Shops and Establishment Act, 1973 and the Rules, 1975 made thereunder and that the provisions of G. D. D. Shops and Establishment Act, 1973 and the rules made thereunder prevails over the I. D. Act, 1974, is without any merits.

15. Admittedly, the Employer Society is a Co-operative Society, set-up under the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa. It is the contention of the Ld. Adv. P. J. Kamat for the Employer Society that in view of the non-obstant clause contained in Section 91 of the Maharashtra Co-operative Societies Act, 1960, this Court has no jurisdiction to adjudicate the present dispute raised by the Workman. It is therefore necessary to quote Section 91 of the said Act.

Section 91—Disputes

(1) Notwithstanding [anything contained] in any other law for the time being in force, any dispute touching the constitution, [elections of the committee or its officers other than elections of committees of the specified societies including its officer], conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society is affiliated or by a creditor of the society, [to the co-operative Court] if both the parties thereto are one or other of the following:-

- (a) x x x
- (b) x x x
- (c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under Sections 43, 44 or 45, and any person claiming through such person:
- (d) x x x
- (e) x x x

Provided that, an industrial dispute as defined in clause (k) of Sec. 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society other than a notified society under Section 73-1C or a society specified by or u/s 73-G, or refusal of admission to membership by a society to any person qualified therefore [or any proceeding for the recovery of the amount as arrears of land revenue on a certificate granted by the Registrar under sub-section (1) of Section 156,] [or any orders,

decisions, awards and actions of the Registrar against which an appeal under section 152 or 152A and revision under Section 154 of the Act have been provided.] shall not be deemed to be a dispute for the purposes of this section.]

Thus in view of the proviso contained in Section 91 of the said Act, it is crystal clear that an "Industrial Dispute" as defined u/s 2 (k) of the I. D. Act, 1947 shall not be deemed to be a dispute as provided under Section 91 of the said Act.

16. In the case in hand, while discussing hereinabove, it has also held by me that the Employer Society is an "Industry" within the meaning of Section 2 (j) of the I. D. Act. Consequently, any difference or dispute raised by the Workman against the Employer is an "Industrial Dispute" within the meaning of Sec. 2 (k) of the I. D. Act. Proviso to Sec. 91 of the Maharashtra Co-operative Societies Act, 1960 clearly excludes an Industrial dispute as defined u/s 2(k) of the I. D. Act, 1947 within the meaning of dispute as stated in the said Sec. 91. It is therefore held that the present Industrial Dispute raised by the Workman against the Employer Society is not a "dispute" within the meaning of Sec. 91 of the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa.

Hence it is held that the Employer Society failed to prove that the present reference issued by the Government of Goa is not maintainable in view of the allegations made in para – a, b, c & d as preliminary objections of the written statement. The issue No. 3 is therefore answered in the negative.

Issue No. 2:

17. The Workman in his statement of claim as well as Affidavit-in-evidence filed in the present proceedings contended that he had denied the charges leveled against him vide charge-sheet dated 16-01-2004 vide his reply dated 27-01-2004, submitted to the Employer Society and that his services were abruptly terminated without holding any departmental enquiry. The Employer in its written statement, filed in the present proceedings clearly admitted that it has dismissed the Workman from services in terms of Rule VIII-(1) of its Service Rule without conducting any enquiry. Thus, in view of clear and unambiguous admission on the part of the Employer, I have no hesitation in holding that no departmental enquiry was held by the Employer prior to the termination of services of the Workman. The Issue No. 2 is therefore answered in the affirmative.

Issue Nos. 1, 4 & 5:

I am deciding the Issue Nos. 1, 4 & 5 together as the said issues are interrelated to each other.

I have heard the oral arguments of the Ld. Advocates appearing for the respective parties. Ld. Advocates appearing for the respective parties also filed their synopsis of written arguments.

18. Ld. Adv. Shri A. Kundaikar representing the Workman during the course of his oral arguments submitted that the Workman was in the employment of the employer Society continuously w.e.f. 01-07-1992 till the date of his dismissal from services w.e.f. 07-08-2004. He submitted that at the time of dismissal from services, the Workman was designated as 'Jr. Clerk/Cashier'. He submitted that the Workman was issued a charge-sheet dated 16-01-2004 stating therein certain acts of misconduct alleged to have been committed by him. He submitted that the Workman denied the charges levelled against him vide charge-sheet dated 16-01-2004 vide his reply dated 27-01-2004. He submitted that the Employer thereafter dismissed the Workman from their services w.e.f. 07-08-2004 without holding any departmental enquiry and without giving one month's notice or wages in lieu of notice as stated in Rule IV of the Service Rules & Bye-Laws of the Employer Society. He submitted that the aforesaid action of the Employer in terminating the services of the Workman is illegal, unjustified, bad in law and in contravention of the well established principles of natural justice. He submitted that the Employer Society miserably failed to prove any of the charges levelled against the Workman vide charge-sheet dated 16-01-2004 by holding any domestic enquiry. He submitted that the Employer in the written statement filed in the present proceedings attempted to justify its order of dismissal of the Workman by alleging that it has dismissed the services of the Workman in terms of Rule VIII - (1) of its Service Rules on the basis of admissions of the Workman. He submitted that the Workman at no point of time has admitted the charges levelled against him but, denied the same vide his reply dated 27-01-2004.

19. On the contrary, Ld. Adv. Shri P. J. Kamat appearing for the Employer during the course of his oral arguments submitted that it has terminated the services of the Workman in terms of Rule VIII (1) of its Service Rules on the basis of admissions of the Workman. He submitted that the Workman upon questioning immediately admitted in writing on 21-07-2003, 22-07-2003 of having

misappropriated certain amount of the depositors of the Employer Society and also suggested that he may be given loan to the extent of misappropriated amount and adjust the loan towards the payment of depositors and that he would pay the loan from his salaries and other dues. He submitted that thereafter the relatives of the Workman approached the Employer and made good an amount of Rs. 1,75,000/- and further undertook to pay the balance amount. He submitted that the Workman wrote another letter dated 29-07-2003 followed by an affidavit dated 16-12-2003 admitting the misappropriation. He submitted that though the Workman vide his reply dated 27/01/2004 denied the charges, however failed to explain the misappropriated amount. He submitted that the Employer has dismissed the services of the Workman on the basis of his admission of guilt and relied upon the following decisions:

1. In the case of *V. T. Kadri v/s D. D. Shah & Co.*, reported in 2007 III CLR 4 of Hon'ble High Court of Bombay.
2. In the case of *New Hind Textile Mills, Unit of NTC (SM) Ltd. v/s Rashtriya Mill Mazdoor Sangh*, reported in 2003 III CLR 332 of the Hon'ble High Court of Bombay.
3. In the case of *Additional District Magistrate (CITY), Agra v/s Prabhakar Chaturvedi and Anr.* reported in 1996 (72) FLR 420 of Hon'ble Supreme Court of India.
4. In the case of *State Bank of India v/s Hemant Kumar*, reported in 2011 II CLR 1 of Hon'ble Supreme Court of India and

I have carefully perused the entire records of the present case. I have also carefully considered the various oral as well as written submissions made by the Ld. Advocates appearing for the respective parties.

20. Undisputedly, the Workman was working with the Employer Society continuously w.e.f. 01-07-1992 till the date of his termination w.e.f. 07-08-2004. It is the contention of the Workman that he was issued a charge-sheet dated 16-01-2004 alleging therein misappropriation and misutilization of the amount of the Employer Society approximately Rs. 4,21,015/- while working as Jr. Clerk at its Valpoi Branch during the period from 15-12-1999 to 25-07-2003. It is further contention of the Workman that though he empathetically denied the said charges levelled against him vide his reply dated 27-01-2004, the Employer abruptly terminated his services vide

its order dated 07-08-2004 without conducting any departmental enquiry to prove the charges levelled against him vide charge-sheet dated 16-01-2004. The Workman therefore submitted that the action of the employer is therefore illegal, unjustified, bad in law and in contravention of the principles of natural justice. The Employer replied to the aforesaid contention of the Workman in the written statement filed in the present proceedings by stating that the Workman vide his letters dated 21-07-2003, 29-07-2003 & Affidavit dated 16-12-2003 admitted the misappropriation of its amount and on the basis of the aforesaid admissions of the Workman it has terminated the services of the Workman in terms of Rule VIII-(1) of its Service Rules and produced on record its Service Rules at Exb. 53. On careful perusal of the said Service Rules of the Employer Society on record at Exb. 53, it indicates that the said rules have not been certified by any competent authority as required under the Industrial Employment (Standing Orders) Act, 1946 though the Employer is in existence since the year 1994-1995. Even otherwise, in terms of Rule-VI (10) of its Service Rule, fraud, misappropriation and misutilization of funds is a major misconduct on the part of its employee and if any staff member is involved in fraud, misappropriation, misutilization of funds he will be placed under suspension and enquiry will be conducted by Enquiry Officer appointed by Board of Directors. In terms of Rule VIII-(1) & (2) of its Service Rules, procedure have been prescribed for the proposed disciplinary action to be taken against its employees without conducting any enquiry and after conducting enquiry respectively. Thus, Rule VIII-(1) & Rule VIII-(2) of its Service Rules are contradictory to each other as it does not provide for the circumstances for the applicability of the said rules. More so ever, in the absence of any provision for the applicability of the said Rule VIII-(1) of its Service Rules, it is in contravention of the principles of natural justice. Thus, Rule VI-(10) of its Service Rule has to be read with Rule VIII -(2) of its Service Rules. Similarly, Rule-V (4) (a) and Rule-X (a) of its Service Rules which provides for punishment of termination of services of its permanent employees who have been found guilty of misconduct, are contradictory to each other. Thus, the aforesaid provisions of the Service Rules of the Employer Society which is on record at Exhibit-53 are contradictory to each other. Hence, it is held that the said Service Rules of the Employer Society at Exb. 53 are not applicable to its workmen, but the Industrial Employment (Standing Orders) Act, 1946 will be

applicable to the workmen of the Employer Society and consequently to the Workman in the present case.

21. Admittedly, no explanation was sought from the Workman pertaining to his alleged act of misconduct by issuing any show cause notice or memo briefly containing such acts of commission and omission of any particular misconduct, but issued a charge-sheet dated 16-01-2004 to the Workman directly which is on record at Exhibit-13 by stating that he has misappropriated/ /misutilized a sum of Rs. 4,21,015/- while working as 'Jr. Clerk' at its Valpoi Branch for the period from 15-12-1999 to 25-07-2003 and that the said act is a serious act of misconduct on the part of the Workman. The Workman was further directed to submit his explanation within seven days in writing from the receipt of the said charge-sheet failing which, it will be presumed that he has no satisfactory explanation to the charges levelled against him and that it shall be constrained to initiate strict disciplinary action against him which may culminate into termination of his services. It is further evident from the charge-sheet dated 16-01-2004 issued to the Workman that a copy of the statement of misappropriated amount was enclosed along with the said charge-sheet.

22. Thus, on carefully perusal of the said charge-sheet dated 16-01-2004 accompanied by a statement of misappropriation of amount issued to the Workman, it reveals that the Employer has failed to make any reference about any alleged admission of the Workman admitting the charges levelled against him in the said charge-sheet nor furnished him a copy of the letters dated 21-07-2003, 29-07-2003 & an Affidavit dated 16-12-2003 which were allegedly written/sworn by the Workman. It is further evident from the said charge-sheet dated 16-0-2004 at Exhibit-13 that the Workman was directed to tender his explanation to the charges levelled against him as well as on the proposed punishment without making any averment about the proving of the said charges of misconduct levelled against him. This act of the Employer is clearly in violation of the principles of natural justice. The Workman has also produced on record his reply dated 27-01-2004 (Exb. 14) to the charge-sheet dated 16-01-2004 addressed to the Employer. It is evident from the said reply of the Workman at Exb. 14 that he has denied the charges levelled against him and further submitted that he will prove his innocence, once all the documents are placed before him.

23. It is well settled principles of the industrial jurisprudence that once the charges levelled against the delinquent employee is denied, it is imperative on the Employer to hold a domestic enquiry by appointing an impartial Enquiry Officer to prove the charges levelled against him. However, in the case in hand, the Workman was issued a charge-sheet dated 16-01-2004 (Exb. 13) alleging certain acts of misconduct namely misappropriation and misutilization of its amount and further directed to tender his explanation within seven days. The Employer has however terminated the services of the Workman w.e.f. 07-08-2004 without holding any domestic enquiry to prove the charges levelled against the Workman vide charge-sheet dated 16-01-2004 though denied the same. The Employer in his termination order issued to the Workman vaguely stated that the services of the Workman stands terminated w.e.f. 07-08-2004 in terms of its Service Rules, without disclosing a specific provision of its Service Rules. The Employer however for the first time in his written statement filed in the present proceedings stated that it has terminated the services of the Workman on the basis of his admission and in terms of Rule VIII-(1) of its Service Rules. The aforesaid stand taken by the Employer appears to be an afterthought as well as contradictory to the evidence on record as nowhere in the charge-sheet dated 16-01-2004 alongwith the statement of account or the Termination Order issued to the Workman, the Employer has disclosed that it has taken note of the so called admission of the Workman and reacted on the same by stating that the charges of misconduct of misappropriation/misutilization stands proved. More so ever the said alleged letters of the Workman dated 21-07-2003, 29-07-2003 and an affidavit dated 16-12-2003 were submitted to the Employer much prior to the issuance of the charge-sheet dated 16-01-2004 to him. The oral evidence on record indicates that the Workman during the course of his cross-examination denied that he was questioned by the Branch Manager in connection with the said fraud and that he had admitted before the Branch Manager that he had taken some money which was not accounted. The oral evidence on record also indicates that the Workman denied that he had signed the said letters dated 21-07-2003, 29-07-2003 and an affidavit dated 16-12-2003. The mere fact that the said charge-sheet dated 16-01-2004 was served upon the Workman is itself implies the conduct of the Employer that the Employer was not satisfied about the explanation given by the Workman and

it desires to hold a domestic enquiry by issuing a charge-sheet. Thus, the Employer failed to prove that it has taken action in terminating the services of the Workman on his admission and in terms of Rule VIII-(1) of its Service Rules. The Issue No. 5 is therefore answered in the negative.

24. The Employer though issued a charge-sheet alleging certain acts of misconducts namely misappropriation and misutilization of its funds, failed to prove the said charges either by holding a domestic enquiry against the Workman or by seeking permission of this Court to prove the said charges of misconduct levelled against the Workman vide charge-sheet dated 16-01-2004 on the floor of this Court in the present proceedings. The Employer has however produced on record certain oral as well as documentary evidence in support of its case. The Ld. Adv. Shri P. J. Kamat representing the Employer in his synopsis of written arguments filed in the present proceedings submitted that the management has every right to adduce independent evidence before this Court to sustain its order of dismissal and relied upon a decision of Hon'ble High Court of Bombay in the case of *V. T. Kadri v/s D. D. Shah & Co.*, reported in 2007 III CLR 4, wherein the Hon'ble High Court of Bombay relying upon a decision of Hon'ble Supreme Court of India in the case of *Firestone Tyre and Rubber Co. of India Pvt. Ltd. v/s Management and Ors.* (AIR 1973 SC 1227) has held that "*the law is settled by Supreme Court that the right in the Management to sustain its order of dismissal, by adducing independent evidence before the tribunal, if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years and it has not been disturbed by Sec. 11 (a) of the Act.*"

25. On the contrary, Ld. Adv. Shri A. Kundaikar representing the Workman during the course of his oral arguments submitted that neither the Employer has held any domestic enquiry nor sought any permission of this Court to lead an independent evidence to prove the charges levelled against the Workman and hence any independent evidence adduced by the Employer on record shall not be taken in to consideration and relied upon a decision of the Hon'ble Supreme Court of India in the case of *Karnataka State Road Transport Corporation v/s Smt. Laxmidevamma and Anr.* reported in AIR 2001 SC 2090, wherein the Hon'ble Apex Court has reiterated the same view taken in its earlier judgement in the case of *Shambu Nath Goyal's Case* (AIR 1984 SC 289)

and held that *"the Employers right to seek permission to lead additional evidence in justification of its decision taken on the basis of a domestic enquiry must be availed by the Employer by making proper request at the time when it files its statement of claim or written statement or makes a application seeking either permission to take certain action or seeking approval of the action taken by it."*

26. I have carefully perused the aforesaid decisions relied upon by the Ld. Advocates appearing for the respective parties. In my opinion, the law laid down by the Hon'ble Supreme Court of India in its constitutional bench judgement in the case of *Karnataka State Road Transport Corporation* is applicable to the present case as it is passed recently by its constitutional Bench. I am bound by the precedent laid down by the Hon'ble Supreme Court of India in its aforesaid five bench constitutional judgement passed in the case of *Karnataka State Road Transport Corporation*. Hence, an independent evidence adduced by the Employer in the present proceedings to prove the charges of misconduct levelled against the Workman vide charge-sheet dated 16/01/2004 without seeking leave of this Court, cannot be considered at all.

27. Ld. Adv. Shri P. J. Kamat, in his synopsis of written arguments relied upon following decisions. I am dealing with the said decisions as under:

In the case of *New Hind Textile Mills, Unit of NTC (SM) Ltd. v/s Rashtriya Mill Mazdoor Sangh*, reported in 2003 III CLR 332 the Hon'ble High Court of Bombay has held that *"the refusal on the part of the Labour Court to consider notice of change on the ground it being a xerox copy is clearly improper and illegal in as much as once it is not disputed that a copy produced on record is a true copy of the original and it is admitted in evidence, it is incumbent upon the Court to deal with such document in accordance with provisions of law."* The principle laid down by the Hon'ble High Court of Bombay is not applicable to the present case as neither the Employer held any enquiry nor sought permission of this Court to prove the charges levelled against the Workman vide charge-sheet dated 16-01-2004 or pleaded certain facts."

Additional District Magistrate (CITY), Agra v/s Prabhakar Chaturvedi and Anr., reported in 1996 (72) FLR 420, Hon'ble Supreme Court of India. In the said case before the Hon'ble Supreme

Court of India, the Respondent was charged for misappropriation of the amount and domestic enquiry was held against the Respondent. The Respondent has clearly admitted guilt in writing before the Enquiry Officer, however in the case in hand, the Workman denied the charges levelled against him. Hence the facts of the aforesaid case are different than the present case. Hence the principle applied in the above case is not applicable to the present case.

In the case of *State Bank of India v/s Hemant Kumar*, reported in 2011 II CLR 1, the Hon'ble Supreme Court of India has held that *"it is well settled that while holding disciplinary proceedings, principles of natural justice are to be strictly adhered to. However, while granting or rejecting adjournments principles of natural justice cannot be stretched to a point where they would render the in house proceedings unworkable"*. The facts of the aforesaid case are totally different then the case in hand. Hence, the principle laid down in the aforesaid case is not applicable to the present case.

28. Thus, the evidence on record indicates that the Employer has failed to prove the charges of misconduct levelled against the Workman either by holding a domestic enquiry or by adducing an independent evidence by obtaining leave of this Court in the present proceedings. The Evidence on record indicates that the Employer has terminated the services of the Workman without proving the charges of misconduct levelled against him. Hence, it held that the Employer failed to prove that the Workman is involved in misappropriation of its fund during the period from 15-12-1999 to 21-07-2003 while working as a Cashier at its Valpoi Branch. The aforesaid action of the Employer is in violation of the principles of natural justice. Hence it is held that the action of the Employer in terminating the services of the Workman w.e.f. 07-08-2004 is illegal, unjustified and bad in law. The Issue No. 1 is therefore answered in the affirmative and Issue No. 4 is answered in the negative.

Issue No. 6:

29. While deciding the Issue No. 1 hereinabove, it has been held by me that the termination of services of the Workman w.e.f. 07-08-2004 by the Employer is illegal, unjustified and bad in law.

30. Ld. Adv. Shri P. J. Kamat, in the synopsis of written arguments filed in the present proceedings relied upon a decision of *Hon'ble Supreme Court of India in the case of Kendriya*

Vidyalaya Sangathan and Anr v/s S. C. Sharma 2005(104) FLR 863. The Hon'ble Apex Court in para-15 of its aforesaid Judgement has ruled as under:

"15..... When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places material in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard." I am bound by the precedent laid down by the Hon'ble Supreme Court of India in its aforesaid Judgement.

31. Even otherwise the Hon'ble Supreme Court of India in its following various recent decisions observed as under :

In the case of M/s. Reetu Marbles v/s Prabhakant Shukla and Anr., reported in 2010 (124) FLR 72, the Hon'ble Supreme Court of India has held that "Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken up by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the Workman was retrenched".

32. The Hon'ble Supreme Court of India in its another case of *Jagbir Singh v/s Haryana State Agriculture Marketing Board & anr. reported in 2009 III CLR 628* it has been held that *"it is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in the recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given factual situation even though the termination of an employee in contravention of the prescribed procedure, compensation instead of reinstatement has been held to meet the ends of justice".*

Thus, the Hon'ble Apex Court in its various series of decisions has consistently held that a relief of reinstatement with full back wages and consequential benefits is not automatic, even if the termination of the Workman is illegal or in contravention of prescribed procedures. I am bound by the precedent laid down by the Hon'ble Apex Court in its aforesaid decisions.

33. The Workman in his claim statement filed in the present proceedings contended that he is ready and willing to join the services as he is unemployed. The Workman has however prayed for full back wages alongwith continuity in services and consequential benefits attached to the post, but failed to pray for reinstatement in services.

34. The evidence on record indicates that the Employer failed to prove the charges of misconduct levelled against the Workman vide charge-sheet dated 16-01-2004 by conducting domestic enquiry nor sought leave of the Court to lead evidence in support of the charge-sheet dated 16-04-2004 issued to the Workman. The evidence on record further indicates that the Workman had been charge-sheeted with major misconduct such as misappropriation as well as misutilization of its funds amounting to Rs. 4,21,015/- approximately. The evidence on record further indicates that the Employer has also produced on record voluminous evidence without seeking leave of this Court to prove the charges. Thus, taking into consideration the charges levelled against the Workman and the evidence adduced by the Employer on record it will not be fair and proper to reinstate the Workman back in service. Even otherwise the Workman has not prayed for his reinstatement in services.

35. As far as back wages are concerned, the oral evidence on record adduced by the Workman indicates that he is unemployed from the date of his dismissal till date.

Ld. Adv. Shri P. J. Kamat, in his synopsis of written arguments relied upon a decision of Hon'ble High Court of Bombay in the case of *S. K. Awasthy v/s M. R. Bhope, Presiding Officer, 1st Labour Court and Ors., reported in 1994 I CLR 254* wherein the Hon'ble High Court has held that *"loss of confidence is one of the well recognized grounds to deny reinstatement and in this case Labour Court rightly exercised discretion in refusing reinstatement and in granting 3 years wages as compensation in lieu of reinstatement. In the said case before the Hon'ble High Court of*

Bombay the Petitioner was charge-sheeted for his certain acts of misconducts. The respondent has however failed to prove the said charges of misconduct levelled against the Petitioner. The Hon'ble High Court of Bombay has awarded the relief of lumpsum compensation equivalent to three years full salary @ last drawn salary instead of reinstatement with full back wages." The principle laid down by the Hon'ble High Court of Bombay in its aforesaid case is equally applicable to the present case.

36. In the case in hand, though the Workman was charge-sheeted for his acts of misconduct such as misappropriation and misutilization of its funds, neither the Employer could hold a domestic enquiry nor prove the said charges of misconduct levelled against the Workman on the floor of this Court by seeking permission. Consequently, failed to prove the charges levelled against the Workman. The charges levelled against the Workman are grave and serious in nature. Hence, in my opinion relief of lumpsum compensation equivalent to three years full salary @ last drawn salary would meet the ends of justice.

In view of the above discussions and with regards to the facts and circumstances of the case, I proceed ahead to adjudicate the reference as under :

ORDER

1. It is held that the action of the Management of M/s. Sankhali Urban-Co-operative Credit Society Ltd., Sankhali, Goa, in terminating the services of Shri Rauji Krishnanath Bhagat, Jr. Clerk/Cashier, with effect from 07-08-2004, is illegal and unjustified.
2. The Management of M/s Sankhali Urban Co-Operative Credit Society Ltd., Sankhali, Goa is hereby directed to pay to the Workman, Shri. Rauji Krishnath Bhagat a lumpsum compensation equivalent to three years full salary @ last drawn salary with immediate effect.
3. No order as to cost.
4. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/1/2011-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court, at Panaji-Goa on 27-06-2011 in reference No. IT/2/2004 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).
Porvorim, 17th November, 2011.

IN THE INDUSTRIAL TRIBUNAL-CUM-
-LABOUR COURT
AT PANAJI-GOA

(Before Smt. Anuja Prabhudessai, Hon'ble
Presiding Officer)

Ref. No. IT/2/2004

Shri Salvador R. Martins,
H. No. 743, Daidar,
Shiroda-Goa
V/s

... Workman/Party I

The General Manager,
M/s. Hindustan Foods Ltd.,
Dempo Housing Campal,
Panaji-Goa.

... Employer/Party II

Workman/Party I represented by Shri P. Gaonkar.
Employer/Party II represented by Adv. Shri P. J. Kamat.

AWARD

(Passed on this 27th day of June, 2011)

1. By order dated 16-12-2003, the Government of Goa, in exercise of powers conferred by Section 10 (1) (d) of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the action of the management of M/s. Hindustan Foods Ltd., Usgao, Goa, in terminating the services of Shri Salvador R. Martins, Helper with effect from 9-10-2002, is legal and justified?

(2) If not, to what relief the Workman is entitled to?"

2. On receipt of the reference, IT/2/2004 was registered. Notices were issued to both parties, pursuant to which the Party I has filed his claim statement at Exb. 5 and Party II has filed its written statement at Exb. 6. The rejoinder of Party I is at Exb. 7.

3. The Party I was employed with the Party II as a Helper. He was served with charge-sheet dated 2-7-2002 for habitual unauthorized absence for total 70 days between the period from June, 2001 to April, 2002 and from 1-6-2002 till the date of the charge-sheet. Shri S. M. Samant was appointed as Inquiry Officer to enquire into the charge level against the Party I. The Inquiry Officer conducted the enquiry and submitted his findings wherein he has held the Party I guilty of the charges levelled against him. After considering the said findings and the explanation given by the Party I, the Party II terminated the services of the Party I w.e.f. 9-10-2002.

4. The Party I has challenged the fairness and validity of the enquiry on the ground that the management had not asked for his explanation before issuing the charge-sheet. It is further stated that the letter dated 20-6-2002 is not a charge-sheet and that it is only a notice of enquiry. The Party I has further stated that the enquiry officer was not an independent and impartial person and that he had acted as a representative of the Party II. The Party I has stated that the management was represented by a legally trained person whereas he was asked to take help of a co-worker. It is stated that the co-worker was appointed by the Party II and that the said co-worker had not cross-examined the witness. The Party I has also stated that he was not allowed to participate fully in the enquiry. The Party I has also stated that the Enquiry Officer as well as the management representative had advised him to admit the charges on an assurance that no severe punishment would be imposed on him and hence he had admitted the charges.

5. The Party I has also stated that he had remained absent due to his sickness and because of the sickness of his aged mother. The reasons of his absence were communicated to the Party II either telephonically or at the time of resuming the duties. The Party I has stated that he had given satisfactory reasons for his absence and as such, the charges levelled against him do not constitute misconduct. He has further stated that the findings given by the Enquiry Officer are erroneous and that he is being victimized for not being in good terms with the Union functioning in the Company. The Party I had stated that the punishment awarded to him is severe, illegal, and unjustified. He has therefore sought reinstatement with full back wages and continuity in service.

6. The Party II has denied that the enquiry was not conducted in fair and proper manner. The Party II has stated that the Party I had fully participated in the enquiry and that he was represented by a co-worker who was also the Secretary of the local committee of the Union of which the Party I was a member. The Party II has denied that the Enquiry Officer was not an independent or impartial person. The Party II has denied that the management was represented by a legally trained person and that it had not allowed the Party I to engage a legally trained person. The Party II has denied that it had engaged the representative of the Party I. The Party II has stated that even though the Party II was represented by co-worker, the Party I had himself cross-examined the witness. The Party II has stated that the Party I was a habitual absentee. The Party II has denied that the Party I was being victimized. The Party II has denied that the punishment awarded to the Party I is severe unjustified and illegal.

7. Based on the above pleadings the following issues were framed:

1. Whether the Party I proves that the enquiry conducted against him is not fair and proper?
2. Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence?
3. Whether the Party I proves that the action of the Party II in terminating his services from 9-10-2002 is illegal and unjustified?
4. Whether the Party I is entitled to any relief?
5. What Award?

8. Issues No. 1 and 2 were treated as preliminary issues. Findings on these issues were given vide order dated 8-8-2002 (Exb. 13), wherein the enquiry conducted against the Party I has been held to be fair and proper and the charges levelled against the Party I are held to be proved to the satisfaction of the Tribunal. Thereafter the parties were called upon to adduce evidence on the issue No. 3, which pertains to the quantum of punishment. Accordingly the Party I has filed his affidavit in evidence (Exb. 14). The Party II has examined its Executive Personnel and Administration, Shri Giridhar Prabhu.

9. Both parties had sought to leave to file written submission in the matter. Lnd. Adv. Shri P. J. Kamat has filed written arguments, which are

at Exb. 24. The Party I has not filed any written submissions as undertaken. I have perused the records and considered the arguments advanced by Lnd. Adv. Shri P. J. Kamat and my findings on the issue No. 3 are as under:

10. *Issue No. 3:* It is not in dispute that Section 11A of the Industrial Disputes Act vests power in the Tribunal with discretion to substitute the order of discharge or dismissal into an order of reinstatement or give such other relief to the Workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. However, it is well settled that these discretionary powers are to be exercised judiciously and not arbitrarily.

11. In this regard, it is advantageous to refer to the decision of the Apex Court in the case of *Mahindra & Mahindra Ltd. V/s. N. B. Nawade 2005-I CLR 803* wherein a three Judge Bench of the Apex Court after referring to the decisions in the case of *U. P. S. R. T. C. v/s Subhash Chandra and Kailash Nath Gupta v/s. Enquiry Officer (2003 II CLR 72)* has held that- *"It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the Workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment"*.

12. The Principles which emerge from the aforesaid decision and several other decisions of the Apex Court and the High Court are that the Tribunal/Court has discretion to interfere with the punishment and alter the same. However, the discretion vested under Section 11-A of the Act has to be exercised judiciously; when the

punishment is either shockingly disproportionate to the gravity of misconduct and shocks the conscience of the Tribunal/Court or when there are other mitigating circumstances which require reduction of the sentence.

13. In the light of the aforesaid binding principles laid down by the Apex Court, the questions which fall for my consideration is whether the penalty imposed on the Party I is shockingly disproportionate to the charges levelled and proved and whether the Party I has shown existence of mitigating circumstances for exercise of discretionary jurisdiction.

14. It is to be noted that the Party I has stated in his affidavit in evidence at Exb. 14 that he was sick on 21-06-2001 and was under medical treatment. He has stated that he had submitted the certificate issued by ESI doctor to the Party II. The Party I has further stated that on 31-07-2001 and 7-01-2002 he had gone to Goa Medical College for treatment. The Party I has deposed that he was on sanctioned leave on 12-10-2001, 15-10-2001, 15-01-2002 to 17-01-2002, 30-03-2002 and half day leave on 28-02-2002. He has further deposed that he had applied for leave from 26-12-2001 to 29-12-2001 because of death of his father and that this leave was recommended by the recommending Authority. The Party I has deposed that he was forced to remain away from work from 02-04-2002 to 24-4-2002 due to his mother's sickness. The Party I has produced leave applications and medical certificate at Exb. 15 colly.

15. A bare perusal of the affidavit indicates that the Party I has sought to justify his absence on the above stated days. It may be mentioned that the issue No. 2, which pertains to the proof of charges levelled against the Party I, was treated as a preliminary issue and the parties were given an opportunity to adduce evidence on the said issue. Though the Party I had filed his affidavit in evidence at Exb. 11, he had not adduced any evidence to show that he was on the sanctioned leave on the dates he was stated to be unauthorizedly absent. As stated earlier findings on the issue No. 2 are already given and the charge is held to be proved to the satisfaction of this Tribunal. Consequently, while deciding the issue on the quantum of punishment, this Tribunal has to proceed on the basis that the allegation of misconduct levelled against the respondent stands proved. The Party I cannot be permitted to re-open the said issue or regurgitate that the charge has not been conclusively proved.

16. Be that as it may, the charge against the Party I is that he had remained unauthorizedly absent on 70 days between the period from June, 2001 to April, 2002 and thereafter from 1-06-2002 till the date of the charge-sheet i.e. 20-06-2002. The leave applications at Exb. 15 colly indicate that the Party I was sanctioned half-day casual leave on 30-03-2002 and two days casual leave on 24-01-2002 and 25-01-2002. The leave application dated 28-02-2002 for half-day casual leave was cancelled and was not signed by the Personnel Officer. Similarly, the three leave applications all dated 28-01-2002 indicate that the Party I had sought privilege leave for three days from 15-01-2002 to 17-01-2002, two days on 24-01-2002 and 25-01-2002, and four days w.e.f. 26-12-2001. The said applications were made after the "period of absence. Besides, the said applications indicate that the Party I had no privilege leave at credit and the leave was not sanctioned. The ESI certificate at Exb. 15 colly indicates that the doctor had recommended medical leave on 21-01-2001. However, there is no evidence on record to show that the Party I had applied for leave and that the same was granted. In the case of *Delhi Transport Corporation v/s Sardar Singh 2004(7) SCC 574*, the Apex Court has held that mere making of an application after or even before absence from work does not in any way assist the concerned employee. The requirement is obtaining leave in advance. In the instant case, the Party I had not only failed to obtain leave on aforesaid dates in advance but also failed to explain and justify his absence on the other dates stated in the charge memorandum. In my considered view the evidence of the Party I vis-a-vis the documents at Exb. 15 colly. are not relevant for deciding the issue on the quantum of punishment.

17. The Party I has also raised a ground of victimization. The Party I has deposed that has deposed that though he was designated as a helper he was asked to work as an operator. The Party I deposed that the management had initiated proceedings against him only because he had requested for the post of operator. He has deposed that the management has not taken any action against other employees namely Jaranardhan Shetkar and Subhash Naik who had also remained unauthorizedly absent for much longer period. It may be mentioned here there are no pleadings to indicate that he had requested the management for the post of the operator and that he was victimized because of the said request. In the claim statement the Party I had averred that he was victimized, as he was not in

good terms with the union functioning in the Company. The grounds of victimization raised in the claim statement differ from the grounds stated in the evidence. The evidence of the Party I is in variance with the pleadings hence the same cannot be looked into.

18. It is also to be noted that in the case of *Messrs. Bharat Iron Works v/s Bhagu Bhai Balu Bhai Patel & ors. reported in AIR 1976 SC 98*, the Apex Court has held that the onus of establishing the plea of victimization is upon the person pleading it. Such plea has to be established by safe and sure evidence. Mere allegations, vague suggestions, and insinuation are not enough. It is further held that a proved misconduct is antithesis of victimization as understood in industrial relations. Thus, if the actual fault or guilt meriting the punishment is established such action will be rid of the taint of victimization.

19. In the instant case, the plea of victimization is vague and is not established by cogent evidence. It is also pertinent to note that the Party I had remained absent for 70 days between the period from June, 2001 to April, 2002. The Party I was on leave without pay from 25-4-2002 to 31-5-2002. The Party I was to report for duty from 1-6-2002, however, he failed to report for duty and as such, the Party II was compelled to send letters to the Party I to report for work. The said letters were returned unserved with postal endorsement as "Unclaimed." Since the Party I had failed to report for duties he was issued charge-sheet dated 20-6-2002 for habitual unauthorized absence. Enquiry was conducted in respect of the said charge, the said enquiry is held to be fair and proper, and the charges are held to be proved to the satisfaction of the Tribunal. The Party I has been held guilty of habitual absenteeism after complying with the procedural requirement. This being the case the plea of victimization has no merits.

20. Now coming to the nature and the gravity of the misconduct, it is advantageous to refer to the decision of the Apex Court in the case of *Delhi Transport Corporation (supra)*, the Apex Court has held that "*When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. ...When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. ...Habitual absence is a factor*

which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings “.

21. In the case of *L&T Komatsu Ltd. v/s N. Udaykumar (2008 1 CLR 978)*, the Apex Court has reiterated that habitual absenteeism is gross violation of discipline and that the Tribunal or the Labour Court is not justified in interfering with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground.

22. In the case of *Pandurang Vithal Kavne v/s. Bharat Sanchar Nigam 2010 CLR 170*, the Division Bench of the Bombay High Court has held that unauthorized habitual absence is a misconduct, which exhibits irresponsibility and lack of interest in work and devotion to duty.

23. The principles laid down in the aforesaid cases make it crystal clear that unauthorized absence or habitual absence is a gross misconduct and in the absence of mitigating circumstances, such misconduct warrants dismissal. Reverting to the facts of the case, the Party I has been held guilty of charge for unauthorized and habitual absence. The unauthorized absence of the Party I was not of few days but was of several months. It is also to be noted that the Party I has not shown that he had genuine reasons for remaining absent without sanctioned leave or for not applying for leave and obtaining leave in advance. The conduct of the Party I in remaining absent without leave or intimation for such long period reflects total lack of devotion to duty and such conduct justifies penalty of dismissal. Moreover, the Party I has not shown any extenuating circumstances to justify interference with the penalty. On the contrary, the evidence of Shri Giridhar I Prabhu, the witness for the Party II indicates that normally the factory works in one shift. Depending upon the work orders the Party II sometimes works in second shift and that sudden absenteeism of any worker affects the work, causes great hardship, and inconvenience to other co-workers. Under the circumstances, the punishment of dismissal cannot be considered as disproportionate, harsh, illegal, and unjustified. Hence, the issue No. 3 is answered in the negative.

24. *Issue No. 4:* The Party I is held guilty of habitual unauthorized absence. The misconduct is grave and affects the working and the discipline at the workplace. There are no mitigating

circumstances to interfere with the penalty imposed against the Party I. Hence, the Party 1 is not entitled for any relief. Issue No. 5 is answered accordingly.

Under the circumstances and in view of discussion supra, I pass the following order.

ORDER

1. The action of the management of M/s. Hindustan Foods Ltd., Usgao, Goa, in terminating the services of Shri Salvador R. Martins, Helper with effect from 9-10-2002, is held to be legal and justified.

2. The Party I is not entitled for any relief.

Inform the Government accordingly.

Sd/-

(A. Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.



Department of Law and Judiciary

Law (Establishment) Division

Corrigendum

No. 8/34/2005-LD (Estt).Part/1901

- Read: i) Order No. 4/3/2/2004-LD-Estt(II) dated 24-05-2006.
ii) Corrigendum No. 4/3/2/2004/LD-Estt(II) dated 01-06-2006.
iii) Order No. 8/34/2005/LD(Estt)(Pt.) dated 19-02-2008.
iv) Order No. 8/34/2005/LD(Estt)(Pt.) dated 09-11-2011.

The name of Shri Vithal T. Talwar at Sl. No. (ii) in the above referred order at (iv), and for period indicated at 'd', 'e' and 'f' against his name shall be substituted to read as "(ii) Shri Vithal D. Talwar" and d. 12-01-2008 to 04-02-2008", respectively.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary, Law (Estt.).
Porvorim, 25th November, 2011.

Department of Mines

Office of the Secretary

Order

No. 96/371/88/IIR-Mines (Part I) 2101

(In the matter of renewal of I & II Mining Lease for Concession No. 19/1951 belonging to the applicant late Shri Shaikh Ayub).

Late Shri Shaikh Ayub was holder of erstwhile mining concession granted under title No. 19 dated 09-03-1951, over an area of 80.26 ha of land, for Iron/Manganese ore situated in villages Tudouverlem/Netorli of Sanguem Taluka. By an application dated 21-11-1988, the applicant late Shri Shaikh Ayub had applied for renewal of mining lease for further period (1st renewal). As the application could not be disposed of by the Directorate of Mines during the first renewal period, the applicant as well as the Directorate assumed that the period of the mining lease was deemed to be extended upto 21-11-2007.

2. Smt. Alfeda Begum, widow of the applicant has applied for Second Renewal, vide Form-J dated 23-10-2006. The Directorate has observed that the mining lease in question falls under the Wild Life Sanctuary as intimated by the Forest Department, vide letter dated 03-07-2002. The Directorate expressed the view, that in view of the order dated 14-02-2000 of the Hon'ble Supreme Court of India, no diversion is allowed inside a National (Park)/Wild Life Sanctuary. The State Government will not be in a position to allow mining activities inside the sanctuary; and as such, the application for renewal of mining lease will have to be rejected. The Directorate decided to grant personal hearing to the applicant interms of Rule 26(i) of MCR, 1960. The Government has designated Secretary (Mines) as Competent Authority on 15-09-2009, to decide the case.

3. The records of the Directorate summoned and perused carefully. The following facts came into light. The concession holder, Late Shri Shaikh Ayub, vide application dated 21-11-1988 has applied for renewal of mining lease. By a notice No. 96/371/88-Mines/13670 dated 23-03-1999 the applicant was called upon to submit the following documents within a period of 60 days. They are (i) Valid Clearance Certificate (ii) Statement of consent towards surface rights (iii) Copy of lease plan (iv) Copy of cadastral survey plan superimposed on above lease plan.

4. Due to non-receipt of the above documents it appears the case was not decided by the Directorate. The record revealed that the applicant preferred a Revision Petition, before the Central Government (Ministry of Mines) on 01-08-1989 on the following grounds. They are: (i) The revision application is being filed without prejudice to the rights and contentions of the applicant in regard to the vires of the Goa, Daman & Diu (Abolition of Concession & Declaration of Mining Leases) Act, 1987, inter-alia on the grounds set out in WP No. 193/1989 filed before Hon'ble High Court of Bombay at Panaji, Goa and order made therein.

5. The applicant is the holder of the aforesaid mining concession granted by the erstwhile Portuguese Government under decree of 20-09-1906, which said concession was sought to be abolished with retrospective effect from 20-12-1961 and declared to be a mining lease expiring on 22-11-1987 in accordance with rule 24 A(8) of MCR, 1960 the Government of Goa, vide notification No. 5/51/87-ILD-P-F dated 20-05-1988 extended the time for filing up to 22-11-1988. Accordingly, the applicant filed an application for renewal on 21-11-1988.

5.1. The Goa Government acknowledged receipt of the application for renewal dated 21-11-1988, vide Form-D dated 20-3-1989. The Government ought to have considered the application and granted renewal of the lease. No order has been issued till date and as such under Rule 24 (5) of MCR, 1960 applications for renewal is deemed to have been refused. The applicants have no other recourse or remedy to set aside the refusal, but to file the revision application under Rule 54(I) of MCR, 1960.

5.2. The applicant contended that the Government has committed an error by breach of provision of Rule 26, MCR, 1960 by way of not directing or communicating the reason for refusal. The Government has mechanically allowed rejection without considering merits. The deemed rejection is against the principles of natural justice. The applicant pleaded to set aside the deemed rejection, to direct Goa Government to grant aforesaid lease and to grant such other relief as circumstance warrants.

6. The Revision petition was decided by the Central Govt., vide its order No. 438/89 dated 11-09-1989. The operative part of the said order is as following: "The Central Government in exercise of their revisionary powers under section 30 of the MM(DR) Act, 1957 and Rule 55 of the

MCR, 1960 set aside the deemed rejection of the petitioner's application for mineral concession, arising out of the State Government failure to pass orders within 06 months. The State Government, is directed now to dispose of the above application on merits within a period not exceeding two hundred days from the date of this order. Should the State Government, fails to pass orders or the petitioner's application he may seek redress in an appropriate court of law, it so advised".

7. Pursuant to the order of the Central Government, Directorate of Mines initiated action to examine the case. The record revealed the following transactions between the applicant and Directorate:

7.1. 23-03-1989 – Directorate of Mines issued notice to the applicant to furnish within 60 days of receipt of the letters, the following documents under sub-rule 3 of Rule 26 MCR, 1960. The documents are: (a) Valid Clearance Certificate (b) Statement of consent towards surface rights (c) Copy of lease plan (d) Copy of cadastral survey plan superimposed on lease plan.

7.2. 26-07-1991 – Directorate asked the applicant to inform whether the village of Verlem of Sanguem taluka is promulgated and to furnish copies of the Index of land in Form I & XIV alongwith 03 copies of cadastral plan.

7.3. 19-08-1991 – The applicant intimated that Verlem village of Sanguem Taluka is not fully promulgated after enquired with the Talathi of the Neturlim Panchayat.

7.4. 28-09-1992 – Directorate of Mines sent notice for payment of mining dues on deemed mining lease of 19/1951 (dead rent ` 27,904).

7.5. 05-11-1992 – Applicant sought from the Directorate two months time for final settlement.

7.6. 21-01-1993 – Directorate of Mines again raised a demand of ` 9832/- towards arrears of dead rent and surface rent.

7.7. 22-04-1994 – Directorate issued another notice asking the applicant to clear the dues.

7.8. 30-03-1995 – Another notice sent to the applicant to clear the dues.

7.9. 01-08-1995 – Directorate of Mines initiated Recovery Proceedings against the applicant to recover dues as arrears of land revenue (period 23-05-1987 to 1993-94 for ` 83,353/-).

7.10. 16-02-1996 – Directorate, again intimated the applicant to clear the dues.

7.11. 26-09-1996 – The Mamlatdar of Sanguem intimated the Directorate regarding full recovery of dues and to treat proceedings as stands closed.

7.12. 15-10-1996 – Applicant intimated the Directorate that out of the demand ` 83,353-00, ` 61,393-00 already paid by him.

7.13. 22-10-1996 – The Mamlatdar of Sanguem again clarified to the Directorate regarding full recovery of dues and closure of the proceedings.

7.14. 07-01-1997 – Directorate of Mines again issued notice to the applicant to clear dues for the year 1995-96.

7.15. 21-11-1996 – Applicant requested the Directorate to issue mining lease for 20 years instead of 10 years under the amended provisions of the Act-Section 8(1) and 8(2) of MM(RD) Act, 1957.

7.16. 09-01-1998 – Directorate issued notice to the applicant to clear dues of surface rent for the year 1996-97.

7.17. 21-05-1999 – Applicant forwarded a copy of the cadastral survey plan, lease plan. Regarding statement of consent, the applicant stated that the concession was granted under 1951, at that time oral consent of the land owners was taken, entered into the area and started mining operations. Valid Clearance Certificate was also not furnished.

7.18. 09-06-1999 – Directorate again directed the applicant to clear dues of surface rent.

7.19. 02-07-1999 – Applicant intimated the Directorate that he had cleared the dues.

7.20. 09-10-2000 – Directorate of Mines again issued notice to the applicant for clearing dead rent and surface rent for the year 1999-2000.

7.21. In an undated letter, Shri Shaikh Salim holding Power of Attorney addressed a letter to the Directorate requesting to intimate to him at his new address No. 2, Ground View Apartment, Ground Floor, Near Football Ground, Pontemol, Curchorem, Goa.

7.22. 13-02-2000 – Power of Attorney holder intimated the Directorate regarding payment of dead rent and surface rent for the year, 1999-2000, seeking Valid Clearance Certificate.

7.23. 21-08-2001 – Directorate raised dues of ` 15,030-00 and ` 201-00 against the applicant (Power of Attorney) towards dead rent and surface rent for the year 2000-2001.

7.24. 11-09-2001 – Applicant informed the Directorate that he had paid substantial amount of Royalty and he is not liable for payment of dead rent.

7.25. 19-04-2002 – Directorate of Mines issued a notice for personal hearing of the applicant on 27-05-2002 as per sub-rule (1) of rule 26 of MCR, 1960 due to failure to produce Valid Clearance Certificate and statement of consent towards surface rent. The notice clearly mentioned to take decision ex-parte in case applicant failed to do so.

7.26. 12-11-2002 – Smt. Alfeda Begum, widow of the concession holder has intimated the Directorate that her husband had expired on 22-7-2002 leaving behind her as moiety holder (Death Certificate annexed). She requested the Directorate to address all communications either to her or to M/s Talha Minerals, C/o Shaikh Saleem, Ground View Apartments, Plot No. 2, Building No. 2, Pontemol, Curchorem, Goa.

7.27. 13-11-2002 – Shri Shaikh Saleem has forwarded following documents to the Directorate of Mines. (a) Xerox copy of "Irrevocable Special Power of Attorney" (b) Xerox copy of "Public Will" dated 26-09-2001 executed by late Shaikh Ayub. (c) Xerox copy of death certificate of the concession holder and (d) Xerox copy of "Affidavit/Declaration" of concession holder.

7.28. 10-01-2003 – The Legal Heirs (08 in numbers) of the concession holder has intimated the Directorate that after the death of the concession holder, the Power of Attorney does not hold good, and requested the Directorate to address to them.

7.29. 12-09-2006 – Directorate of Mines raised demand of dead rent ₹ 64,208-00 and surface rent ₹ 12,039-00 for the year 2005-06.

7.30. 18-10-2006 – The Power of Attorney (Shri Shaikh Saleem) has requested the Directorate for issue of Valid Clearance Certificate.

7.31. 23-10-2006 – The Legal Heir, Smt. Alfeda Begum w/o concession holder has failed Form-J seeking renewal of mining lease.

7.32. 08-02-2007 – Directorate of Mines issued a notice asking the Legal Heir of the concession holder to appear in person for a hearing on 02-03-2007 indicating that as to why the application should not be rejected in view of mining lease in question came to be included in the Netravali Wild Life Sanctuary.

7.33. 01-03-2007 – The Legal Heir of the applicant sought 90 days time to submit all documents.

7.34. 16-10-2007 – Directorate of Mines has acknowledged the receipt of Form-J for renewal alongwith other enclosures such as challan for ₹ 2500/-, an affidavit for Income Tax Clearance, affidavit showing particulars of areawise minerals in each State and cadastral plan of the applied area.

7.35. 21-11-2008 – Directorate of Mines issued notice to Smt. Alfeda Begum w/o concession holder to furnish (i) Valid Clearance Certificate (ii) Mining Plan duly approved by the IBM and (iii) Succession Deed, within thirty days from the date of receipt of notice failing which the application for renewal of lease shall be liable to be rejected.

7.36. 08-10-2009 – Directorate of Mines issued notice to Smt. Alfeda Begum w/o concession holder and Smt. Anjum Salim Shaikh, P.O.A. holder, for a personal hearing on 21-10-2009. The notice disclosed that the mining lease in question falls under the Wild Life Sanctuary. In view of the order dated 14-02-2000 of the Hon'ble Supreme Court of India, no diversion is allowed inside a National Park/Wild Life Sanctuary. Directorate also indicated in the notice that no mining activities can be permitted to be carried out inside the Sanctuary area, Application for renewal of mining lease is liable to be rejected.

7.37. 20-10-2009 – Smt. Alfeda Begum, Legal Heir sought ten days time for appearance.

7.38. 02-11-2009 – Directorate issued notice for personal hearing of the legal heir on 17-11-2009, 09-12-2009, 20-01-2010, but hearing could not be held.

7.39. 08-09-2011 – Directorate issued notice for personal hearing of the Legal Heir for hearing on 27-09-2011.

8. I have heard the representative of the Legal Heir on 27-09-2011. Shri Shaik Mohammad Iqbal, resident of Margao, General Power of Attorney holder has represented on behalf of Smt. Alfeda Begum, wife of the concession holder. The GPA has taken on record. Shri Iqbal has stated that the Directorate fail to finalise First Renewal of the lease within the stipulated period. According to him, the lease is deemed to have been extended upto 21-11-2007. He orally submitted, there is nothing more to add and thereby pleaded for renewal of the lease for further period.

9. The main issues to be examined in the case under question are as following:

- (a) Whether the Directorate of Mines failed to finalise First Renewal and Second Renewal of lease from 22-11-1988 to 20-11-2007 and further period within the stipulated period?
- (b) Whether the mining lease can be granted now to the deemed lease holder in the light of the fact that the said lease area in question falls under the Wild Life Sanctuary?

10. As regards to the issue that the Directorate of Mines failed to grant First Renewal of the lease as mentioned at para 9(a) above is concerned, the record revealed the following facts:

Late Shri Shaikh Ayub was/is the concession holder of the title No. 19/1951, over an area of 80.26 ha. of land for Iron/Manganese ore, situated in villages Tudou, Verlem and Netorli of Sanguem Taluka. By an application dated 21-11-1988, late Shri Shaikh Ayub had applied for renewal of mining lease for further period. As the application dated 21-11-1988 could not be disposed of during the First Renewal period, the period of the mining lease was deemed to have extended upto 21-11-2007. By an application dated 23-10-2006, received on 27-10-2006, Smt. Alfeda Begum widow of late Shri Shaikh Ayub has applied for the Second Renewal in Form-J for further period. Though the application for First Renewal was received by the Directorate of Mines on 21-11-1988, the Directorate failed to decide the case within the stipulated period. The applicant came to the conclusion that his case was a deemed rejection of lease. He filed a revision petition before the Central Government on 01-08-1989. The petition was decided on 11-09-1989, vide order No. 438/89. The case was remanded back to the State Government for disposal within two hundred days.

10.1. As per the direction of the revisionary authority, the Directorate of Mines has initiated the proceedings with effect from 26-07-1991 onwards which is pending for more than 22 years. The Directorate had issued notices to the applicant/legal heir/Power of Attorney on various dates, asking to clear dues of dead rent, surface rent, submission of various documents, such as, Valid Clearance Certificate, statement of consent towards surface rights, copy of lease plan, copy of cadastral survey plan superimposed on lease plan, approved mining plan by the IBM, on 23-03-1989, 26-07-1991, 28-08-1992, 21-01-1993, 20-04-1994, 22-04-1994, 30-03-1995, 16-02-1996,

07-01-1997, 09-01-1998, 09-06-1999, 09-10-2000, 21-08-2001, 19-04-2002, 12-09-2006, 08-02-2007, 21-11-2008, 08-10-2009, 02-11-2009, 08-09-2009, 27-09-2011 respectively. In addition, Directorate also initiated recovery proceedings to recover the dues of dead rent, surface rent as arrears of land revenue for the period from 23-05-1987 to 1993-94. It was recovered in the year 1996.

10.2. In response to the above notices of the Directorate, records revealed that the applicant and his Legal Heir/Power of Attorney have also responded on the various dates, furnishing details of payment cleared in respect of dead rent, surface rent, submission of documents, such as copy of lease plan, copy of cadastral plan and also asking to issue Valid Clearance Certificate on, 19-09-1991, 05-11-1992, 15-10-1996, 21-11-1996, 02-07-1999, 21-05-1999, 13-02-2001, 11-09-2001, 12-11-2002, 13-11-2002, 10-01-2003, 18-10-2006, 23-10-2006, 01-03-2007, 20-10-2009 respectively.

10.3. Above correspondences held between the Directorate of Mines and the applicant/Legal Heir/Power of Attorney as listed at para 10.1 and 10.2 above, revealed that the Applicant/Legal Heir/Power of Attorney have furnished documents showing partial clearance of dues of dead rent, surface rent, but failed to obtain valid clearance certificate; submitted only copy of the lease plan, copy of the cadastral plan, but failed to furnish Approved Mining Plan from the IBM, Succession Deed, Valid Clearance Certificate.

10.4. Thus, it may be observed there was an attitude of lackadaisical approach in dealing the case not only by the Directorate of Mines but also by the concession holder/legal heir/POA. It reveals non-seriousness to pursue their case with the Directorate. The applicant even till today failed to produce Valid Clearance Certificate, Approved Mining Plan from the IBM, and Succession Deed. Therefore, the case of the applicant for First Renewal and Second Renewal could not be concluded within the stipulated period. The onus squarely rests with the applicant, to furnish all relevant documents within 60 days from the date of clarification raised by the Directorate, as per sub-rule (1) (3) of rule 26 of Mineral Concession Rules, 1960. Even after lapse of 22 years, the applicant/legal heir/POA failed to furnish Valid Clearance Certificate and the most important document, the approved mining plan from the IBM alongwith the Succession Deed.

11. It may be recalled, on 23-05-1987, the Goa Daman & Diu Mining Concessions (Abolition & Declaration as Mining Leases) Act, 1987, Central Act No. 16 of 1987 was enacted. By virtue of section 4 of this Act, 1987, the mining concession contained in schedule I & schedule II appended to the Act were deemed to have been abolished, and were deemed to be mining leases granted under the Mines & Minerals (Development & Regulation) Act, 1957. This Act, 1987 was challenged before the Hon'ble High Court of Bombay at Panaji, in W.P. No. 177/90. The Hon'ble High Court in its order dated 20-06-1997 uphold the enactment of 1987 Act. Aggrieved by the above, Special Leave Appeal (Civil) No. 23827/97 was filed, (M/s. Shantilal K. Das & Bros. & Another (Petitioners) v/s GOI & other Respondent) before the Hon'ble Supreme Court of India.

12. The Hon'ble Supreme Court in its order dated 02-03-1998 has directed that during the pendency of the appeals, the appellants are permitted to carry on mining operation and mining business in the mining areas for which renewal applications have been made on the condition that the appellant shall pay to the respondents from the date of commencement of the impugned Act all the amount of dead rent, royalty as now stipulated by the respondents under the impugned Act without prejudice and other protest. The appellant will also comply with all other conditions. As regards the period from 1961 till the coming into force of the impugned Act, it will be open to the respondents to rake proceedings for assessment of the amounts payable by the appellants but no recovery shall be made without further order from the Court.

13. As regards to the issue to allow mining lease within the area declared as Wild Life Sanctuary is concerned, the records available on file revealed the following fact: The Deputy Conservator of Forest, (Monitoring & Evaluation) has intimated to the Directorate of Mines, regarding the title under question 19/51, including 37 other mines are falling inside the Wild Life Sanctuary as per guidelines for diversion of fresh land for non-forest purpose under the Forest (Conservation) Act, 1980 that are part of National Park and Wild Life Sanctuaries. The letter mentioned the Hon'ble Supreme Court order dated 14-02-2000 restricting the renewal from Sanctuaries/National Parks be enforced, i.e. no diversion is to be allowed in such areas.

ORDER

14. In the light of above, as the title No. 19/51 under question falls within the Wild Life Sanctuary, and as directed by the Hon'ble Supreme Court order dated 14-02-2000, no renewal of mining lease is permissible inside National Parks/ /Wild Life Sanctuary. There shall be no question of granting mining lease to the applicant under title No.19/51. The application dated 21-11-1988 for First Renewal is hereby rejected in terms of sub-rule (1) and (3) of rule 26 Mining Concession Rules, 1960 for non-submission of relevant documents within the stipulated period of 60 days. The application dated 23-10-2006 for Second Renewal is also rejected, due to the area of mining lease falls under the Wild Life Sanctuary.

(This order is issued by me on 14-11-2011 with my Seal & Signature).

S. Kumaraswamy
Secretary Mines &
Appropriate Authority
Secretary (Mines).



Department of Personnel

Order

No. 6/2/2002-PER(Part)

Read: Order No. 6/2/2002-PER(Part) dated 14-11-2011.

In partial modification of Order dated 14-11-2011, read above, the transfer and posting of Smt. Siddhi T. Halarnkar, Deputy Director (Admn.), Water Resources Department, as Deputy Collector (Rent Control), Mapusa shall be treated as cancelled.

2. Smt. Vitoria Irene Sequeira, transferred and posted as Deputy Director (Admn.), Water Resources Department, is now transferred and posted as Deputy Director (Admn.), Animal Husbandry & Veterinary Services.

3. Smt. Darshana S. Narulkar, Under Secretary (Home-I) transferred and posted as Deputy Director (Admn.), Food & Drugs Administration Department is now transferred and posted as Deputy Director (Admn.), Directorate of Transport thereby relieving Smt. Meghana V. Shetgaonkar, Deputy Director (Admn.), Directorate of Agriculture, of the additional charge.

4. Smt. Meghana Shetgaonkar, Deputy Director (Admn.), Directorate of Agriculture shall hold

charge of the post of Additional Deputy Collector (Rent Control), Mapusa, in addition to her own duties, until further orders.

5. The posting of Shri Parag M. Nagarcenkar as Under Secretary (Revenue-II) shall be read as Under Secretary (Revenue-I).

Consequently, Smt. Neela S. Dharwadkar, shall continue as Under Secretary (Revenue-II).

All the Officers except Officers at Sr. Nos. 2 and 6 of the Order read above, shall draw their salary for the current month, on the posts held by them prior to their transfer.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 16th November, 2011.

Order

No. 6/12/2011-PER

Smt. Meena H. Naik Goltekar, Under Secretary-cum-Registrar, Goa State Information Commission, and holding the additional charge of the posts of Deputy Registrar of Co-operative Societies and Additional Director of Municipal Administration, shall also hold charge of the post of Deputy Director of Panchayats (North), in addition to her own duties, with immediate effect and until further orders.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 18th November, 2011.

Memorandum

No. 6/4/2011-PER

Read: Memorandum No. 6/4/2011-PER dated 22-09-2011.

The Tentative Seniority of Junior Administrative Grade Officers of Goa Civil Service was circulated vide Memorandum dated 22-09-2011, read above. No objections have been received from the concerned Officers and hence the final Seniority is determined as under:

Sr. No.	Name of the Officer	Date of appointment	Date of retirement	Remarks
1	2	3	4	5
1.	Shri Dattaram G. Sardessai	15-07-2011	31-10-2023	
2.	Shri T. S. Sawant	15-07-2011	31-10-2018	
3.	Shri Arvind D. Loliyekar	15-07-2011	30-04-2021	
4.	Shri Gurudas Pilarnekar	15-07-2011	30-11-2024	
5.	Shri Joasinho Vaz	15-07-2011	30-09-2011	Retired.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 14th November, 2011.

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Department of Public Health

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Order

No. 4/25/2008-II/PHD

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/30(3)/2002/238 dated 11-11-2011, Government is pleased to promote Smt. Juliana Rodrigues, Biochemist to the post of Senior Biochemist (Group 'B' Gazetted) in the Department of Biochemistry in Goa Medical College, Bambolim on regular basis in the Pay Band—2, ` 9,300-34,800 with Grade Pay of ` 4,600/- and other allowances to be fixed as per rules with immediate effect.

Smt. Juliana Rodrigues shall be on probation for a period of 2 years.

The promotion is made against the vacancy occurred due to retirement of Smt. Shakuntala R. Mahatme, Senior Biochemist w.e.f. 01-12-2006 and subsequently revived vide Order No. 4/22/2009-II/PHD dated 18-08-2011.

By order and in the name of the Governor of Goa.

D. G. Sardesai, Joint Secretary (Health).

Porvorim, 18th November, 2011.

Order

No. 21/5/2002-I/PHD

Government is pleased to accept the resignation tendered by Dr. Shital Pawar, Medical Officer, Primary Health Centre, Shiroda vide letter dated 09-06-2011 w.e.f. 09-06-2011 (B.N.). She stands relieved from the said post w.e.f. the same date i.e. 09-06-2011 (B.N.).

By order and in the name of the Governor of Goa.

Paula Fernandes, Under Secretary (Health-II).

Porvorim, 23rd November, 2011.

Order

No. 4/14/2003-II/PHD/Vol. IV

On the recommendation of the Goa Public Service Commission conveyed vide their letter No. COM/II/12/30(5)/2011/214 dated 17-10-2011, Government is pleased to declare Dr. Ajit Nagarsenkar, Assistant Professor, Department of Obstetrics & Gynaecology, Goa Medical College having completed satisfactorily his probation period of two years from 22-02-2007 to 19-02-2009.

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Health).

Porvorim, 22nd November, 2011.

Order

No. 4/14/2003-II/PHD/Vol. IV

On the recommendation of the Goa Public Service Commission conveyed vide their letter No. COM/II/12/30(4)/2011/225 dated 28-10-2011, Government is pleased to declare Dr. Savita Chandra, Professor & Head, Department of Obstetrics & Gynaecology, Goa Medical College having completed satisfactorily her probation period of two years from 23-12-2008 to 22-12-2010.

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Health).

Porvorim, 22nd November, 2011.

Order

No. 4/14/2003-II/PHD/Part

On the recommendation of the Goa Public Service Commission conveyed vide their letter

No. COM/II/12/30(6)/2011/226 dated 31-10-2011, Government is pleased to declare Dr. Joaquim Proenca, Clinical Neurophysiologist, Department of Neurology, Goa Medical College to have completed satisfactorily his probation period of two years from 16-07-2009 to 15-07-2011 and also to confirm him in the said post of Clinical Neurophysiologist with immediate effect.

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Health).

Porvorim, 22nd November, 2011.

Addendum

No. 8/40/89-I/PHD

Read: Order No. 48/2/2009 dated 31-08-2009.

The following para shall be added after the first para of the Government Order cited above:

The deputation of Dr. Preetam Naik, Medical Officer shall be governed by the standard terms of deputation as contained in Office Memorandum No. 13/4/74-PER dated 12-02-1999 and as amended from time to time.

By order and in the name of the Governor of Goa.

Paula Fernandes, Under Secretary (Health-II).

Porvorim, 23rd November, 2011.

Order

No. 44/24/2011-I/PHD

Read: Memorandum No. 45/1/2004-I/PHD dated 11-10-2011.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/24(2)/2011/185 dated 22-09-2011, Government is pleased to appoint Dr. Pallavi Anup Kolvalkar, to the post of Junior Radiologist (Group "A" Gazetted) in the Pay Band:3 of ` 15,600-39,100+` 5,400/- (Grade Pay) under the Directorate of Health Services with immediate effect as per the terms and conditions contained in the Memorandum cited above and post her at New District Hospital, Mapusa.

Dr. Pallavi Anup Kolvalkar shall be on probation for a period of two years.

She has been declared medically fit by the Medical Board.

The appointment is made subject to the verification of her character and antecedents.

In the event of any adverse matter noticed by the Government on verification of character and antecedents, her services will be terminated.

By order and in the name of the Governor of Goa.

D. G. Sardessai, Joint Secretary (Health).

Porvorim, 25th November, 2011.

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Department of Revenue

Notification

No. 23/16/2010-RD

Whereas by Government Notification No. 23/16/2010-RD dated 07-09-2010 published on pages 593 to 594 of Series II No. 25 of the Official Gazette, dated 16-09-2010 and in two local newspapers (1) "Herald" dated 09-09-2010 and (2) "Pudhari" dated 09-09-2010, it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification was likely to be needed for the public purpose viz. Land acquisition for construction of 300 m³ GLR at Surla Village in Bicholim Taluka.

And Whereas, the Government of Goa (hereinafter referred to as "the Government") after considering the report made under sub-section (2) of Section 5-A of the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, Therefore, the Government hereby declares, under Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also appoints, under clause (c) of Section 3 of the said Act, the Deputy Collector & SDO, Bicholim-Goa, to perform the functions of a Collector, for all proceedings hereinafter to be taken in respect of the said land, and directs him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the Office of the said Deputy Collector & SDO, Bicholim-Goa, till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Taluka: Bicholim

Village: Surla

Survey No./ /Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
283	O: 1. Kashinath Shamba Naik Gaonkar. Raghunath Shamba Naik Gaonkar. Mahadeo Shamba Naik Gaonkar. Pundalik Rama Naik Gaonkar. Anant Tano Naik Gaonkar. Vasu Vithal Naik Gaonkar.	485

Boundaries :

North : S. No. 287, 283.

South : S. No. 283, 277.

East : S. No. 283.

West : S. No. 287.

Grand Total: 485

By order and in the name of the Governor of Goa.

Pandharinath N. Naik, Under Secretary (Rev-I).

Porvorim, 25th November, 2011.

Notification

No. 23/29/2010-RD

Whereas by Government Notification No. 23/29/2010-RD dated 02-12-2010 published on Series II No. 38 of the Official Gazette, dated 16-12-2010 and in two local newspapers (1) "Goa Doot" dated 08-12-2010 (2) "Herald" dated 08-12-2010, it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification was likely to be needed for the public purpose viz. Land Acquisition for const. of Missing links widening of traffic congestion location in Margao city.

And Whereas, the Government of Goa (hereinafter referred to as "the Government") after considering the report made under sub-section (2) of Section 5-A the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, Therefore, the Government hereby declares, under Section 6 of the said Act that the said land is required for the public purpose specified above.

The Government also appoints, under clause (c) of Section 3 of the said Act, the Special Land Acquisition Officer, SIP, WRD, Gogal, Margao-Goa, to perform the functions of a Collector, for all proceedings hereinafter to be taken in respect of the said land, and directs him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the Office of the said the Special Land Acquisition Officer, SIP, WRD, Gogal, Margao-Goa, till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Taluka: Salcete Village: Margao

P.T. Sheet No./ /Chalta No.	Names of interested parties	Area in sq. mts.
1	2	3

274/98 part	O: 1. Smt. Monica Dias. 2. Shri Nolasco Dias.	108
274/99 part	O: 1. Shri Costantino Furtado. 2. Smt. Maria Rosada Faleiro. 3. Smt. Quiteria Gonsalves E. Noronha.	4
274/81 part	O: 1. Comunidade.	135
274/100	O: 1. Smt. Maria Rosada Faleiro. 2. Shri Costantino Furtado.	61
274/101	O: 1. Smt. Maria Rosada Faleiro. 2. Shri Costantino Furtado.	27
274/102	O: 1. Smt. Maria Rosada Faleiro. 2. Shri Costantino Furtado.	26
274/103	O: 1. Smt. Maria Rosada Faleiro. 2. Shri Costantino Furtado.	26
274/104	O: 1. Smt. Maria Rosada Faleiro. 2. Shri Costantino Furtado.	42
274/108	O: 1. Smt. Maria Rosada Faleiro. 2. Shri Costantino Furtado.	86
274/109	O: 1. Shri Marcel Sequeira.	90
274/110	O: 1. Shri Marcel Sequeira.	25
274/111	O: 1. Shri Marcel Sequeira.	30
274/112	O: 1. Shri Marcel Sequeira.	36
274/113	O: 1. Shri Marcel Sequeira.	36
274/114	O: 1. Shri Marcel Sequeira.	36
274/115	O: 1. Shri Marcel Sequeira.	36
274/116	O: 1. Shri Marcel Sequeira.	32
280/146	O: 1. Shri Marcel Sequeira.	110
280/105	O: 1. Shri Marcel Sequeira.	23
280/147	O: 1. Shri Marcel Sequeira. 2. Mr. Manuel Marcel F. Fernandes. 3. Mrs. Luisa F. Rodrigues.	5

1	2	3
280/141	O: 1. Mrs. Luisa F. Rodrigues. 2. Mr. Manuel Marcel F. Fernandes.	126
280/135	O: 1. Shri Marcel Sequeira.	2
280/136	O: 1. Shri Marcel Sequeira.	2
280/137	O: 1. Shri Marcel Sequeira.	2
280/134	O: 1. Shri Marcel Sequeira.	7
280/107	O: 1. Mrs. Luisa F. Rodrigues. 2. Mr. Manuel Marcel F. Fernandes.	3
280/106	O: 1. Mrs. Luisa F. Rodrigues. 2. Mr. Manuel Marcel F. Fernandes.	5
280/108	O: 1. Mrs. Luisa F. Rodrigues. 2. Mr. Manuel Marcel F. Fernandes.	3
280/109	O: 1. Mrs. Luisa F. Rodrigues. 2. Mr. Manuel Marcel F. Fernandes.	28
280/110	O: 1. Mrs. Luisa F. Rodrigues. 2. Mr. Manuel Marcel F. Fernandes.	36
280/111	O: 1. Mrs. Luisa F. Rodrigues. 2. Mr. Manuel Marcel F. Fernandes.	36
280/112	O: Shri Inacinho Rodrigues.	36
280/113	O: Shri Inacinho Rodrigues.	39
280/114	O: Shri Inacinho Rodrigues.	38
280/115	O: Shri Inacinho Rodrigues. H: 1. Shri Bertha Gonsalves E. Rodrigues. 2. Shri Thomas N. Rodrigues	49
280/116	O: Shri Inacinho Rodrigues.	5
280/149 part	O: Shri Inacinho Rodrigues. H: 1. Shri Bertha Gonsalves E. Rodrigues. 2. Shri Thomas N. Rodrigues.	9
280/139 part	O: Comunidade de Navelim.	4
280/148	O: Shri Inacinho Rodrigues. H: 1. Shri Bertha Gonsalves E. Rodrigues. 2. Shri Thomas N. Rodrigues.	40
274/134/15	Records not available.	104
274/134/16	Records not available.	62
274/134/17	Records not available.	70
281/45/4	O: Comunidade de Margao. 1. Shri Caitano Barreto. 2. Gilbert Barreto.	4005
285/11/89 part	Records not available.	7
206/1/24 pt	Records not available.	97

Boundaries :

North : P.T.S. 274/98, 156, 167,
134/14.
South : P.T.S. 281/2, P.T.S. 280/149.
East : P.T.S. 281/45, Nalla.
West : Nalla and Road.

1	2	3
	North: Road.	
	South: P.T.S. 285/11, S.D. 89.	
	East : P.T.S. 286/1.	
	West : P.T.S. 285/11.	
	North: P.T.S. 206/38.	
	South: P.T.S. 206/24.	
	East : P.T.S. 206/38, 24.	
	West : Road.	
Grand Total: 5789		

By order and in the name of the Governor of Goa.

Pandharinath N. Naik, Under Secretary (Revenue-I).
Porvorim, 25th November, 2011.

Notification

No. 22/10/2011-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose, viz. Land Acquisition in the property surveyed under Survey No. 104/1, 3, 5, 7, 8(part), 9(part) of Pilerne Village for Development of Playground.

Now, therefore, the Government hereby notifies under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contract for the disposal of the said land by sale, lease, mortgage, assignment, exchange or otherwise or any outlay commenced or improvements made thereon without the sanction of the Collector appointed under paragraph 4 below, after the date of the publication of this notification, will under clause (seventh) of Section 24 of the said Act be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette and in two daily newspapers and public notice thereof shall be given in due course. If the acquisition is abandoned wholly or in part, the fact will also be notified in the same manner.

4. The Government further appoints under clause (c) of Section 3 of the said Act, the Dy. Collector (Rev.), Collectorate of North Goa District, Panaji, to perform the functions of a Collector, North Goa District, Panaji, under the said Act in respect of the said land.

5. The Government also authorizes under sub-section (2) of Section 4 of the said Act, the following Officers to do the acts, specified therein in respect of the said land.

1. The Collector, North Goa District, Panaji-Goa.
2. The Deputy Collector (Rev.), Collectorate of North Goa District, Panaji.
3. The Block Development Officer, Mapusa, Bardez-Goa.
4. The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the Office of the Deputy Collector (Rev.), Collectorate of North Goa District, Panaji, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Taluka: Bardez		Village: Pilerne	
Survey No./ Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.	
1	2	3	
104	1 O: Comunidade of Pilerne. T: Vassu Babani Malvankar.	3650	
104	3 O: Comunidade of Pilerne. T: Gajanan Pandari Shirodkar Naik.	3875	
104	4 O: Comunidade of Pilerne. T: Maria D'Costa/Maria Santan D'Costa.	525	
104	5 O: Maria Carmo Fernandes e Alvares.	3850	
104	7 O: Comunidade of Pilerne. T: Maria Purificacao Mendes.	3800	
104	8 part O: Comunidade of Pilerne. T: Pascoal Benedito Afonso Albuquerque.	2625	
104	9 part O: Comunidade of Pilerne. T: Maria Piedade Pereira.	2575	
104	10 part O: Joao Antonio Gomes.	2800	

Boundaries :

North : Road, S. No. 104/10, 6;

South : S. No. 104/11, 6, 8;

1	2	3
East	: S. No. 104/2;	
West	: S. No. 104/16, 6, 8, 104/9, 10.	
		Total: 23700

By order and in the name of the Governor
of Goa.

Pandharinath N. Naik, Under Secretary (Rev-I).
Porvorim, 28th November, 2011.

Department of River Navigation

Order

No. RND/Admn/I/Prom/375/1680

Refer: Order No. RND/Admn/I/Prom/774/1712
dated 8-2-2002.

Order No. RND/Admn/I/Prom/774/1912
dated 11-3-2002.

Order No. RND/Admn/I/Prom/777/310
dated 2-7-2010.

In pursuance to creation of posts vide order
No. RND/Admn/I/375/1382 dated 20-10-2011 and
in supersession of the orders under reference,
Government is pleased to indicate the final
sanctioned staff strength of the River Navigation
Department, Betim as under:

Sr. No.	Category of staff	Sanctioned strength	Pay Band+Grade Pay
1	2	3	4
1.	Director-RND	1	15,600-39,100+GP 7,600
2.	Admn-cum-Accounts Officer	1	15,600-39,100+GP 4,600
3.	Asst. Accounts Officer	1	9,300-34,800+GP 4,200
4.	Accountant	1	9,300-34,800+GP 4,200
5.	Head Clerk	2	9,300-34,800+GP 4,200
6.	Jr. Stenographer	1	5,200-20,200+GP 2,400
7.	U.D.C./Cashier	11	5,200-20,200+GP 2,400
8.	L.D.C.	11	5,200-20,200+GP 1,900
9.	Peon	5	5,200-20,200+GP 1,800
10.	Driver (L)	3	5,200-20,200+GP 1,900
11.	Sweeper	2	5,200-20,200+GP 1,800
12.	Daftary	1	5,200-20,200+GP 1,800
13.	Ticket Markers	3	5,200-20,200+GP 1,800
Total		43	

Flotilla Staff

1.	Traffic Officer	1	9,300-34,800+GP 4,200
2.	Traffic Inspector	1	5,200-20,200+GP 2,800
3.	Inspectors	7	5,200-20,200+GP 2,800

1	2	3	4
4.	Coxswain	83	5,200-20,200+GP 2,400
5.	Machinist	83	5,200-20,200+GP 2,400
6.	Sailor	230	5,200-20,200+GP 1,900
7.	Ticket Collectors	23	5,200-20,200+GP 1,900
8.	Station Lad	6	5,200-20,200+GP 1,800
Total		434	

Workshop

1.	Sr. Workshop Superintendent	1	15,600-39,100+GP 6,600
2.	Workshop Supdt.	1	9,300-34,800+GP 4,200
3.	Supervisor	4	9,300-34,800+GP 4,200
4.	Job-Rec-cum-Evaluator	1	5,200-20,200+GP 2,800
5.	Sr. Storekeeper	2	5,200-20,200+GP 2,800
6.	Storekeeper	2	5,200-20,200+GP 2,400
7.	Asst. Storekeeper	2	5,200-20,200+GP 1,900
8.	Chargehand (Welding)	5	5,200-20,200+GP 2,800
9.	Chargehand (Plating)		5,200-20,200+GP 2,800
10.	Chargehand (Mech./Electrical)		5,200-20,200+GP 2,800
11.	Chargehand (Fitting & Machine Shop)		5,200-20,200+GP 2,800
12.	Chargehand (Carpentry & Shipwright)		5,200-20,200+GP 2,800
13.	Time Keeper	1	5,200-20,200+GP 1,900
14.	Machinist (W/Shop)	1	5,200-20,200+GP 2,400
15.	Sr. Mechanic	5	5,200-20,200+GP 2,400
16.	Mechanic	11	5,200-20,200+GP 1,900
17.	Slipway In-charge	1	5,200-20,200+GP 2,400
18.	Sr. Fitter	3	5,200-20,200+GP 2,400
19.	Fitter	13	5,200-20,200+GP 1,900
20.	Sr. Welder	3	5,200-20,200+GP 2,400
21.	Welder	16	5,200-20,200+GP 1,900
22.	Winch Operator	1	5,200-20,200+GP 2,400
23.	Sr. Turner	2	5,200-20,200+GP 2,400
24.	Turner	2	5,200-20,200+GP 1,900
25.	Sr. Electrician	2	5,200-20,200+GP 2,400
26.	Electrician	4	5,200-20,200+GP 1,900
27.	Machinist (Carpentry)	1	5,200-20,200+GP 2,400
28.	Senior Carpenter	2	5,200-20,200+GP 2,400
29.	Carpenter	3	5,200-20,200+GP 1,900
30.	Senior Plater	4	5,200-20,200+GP 2,400
31.	Plater	21	5,200-20,200+GP 1,900
32.	Jamadar	1	5,200-20,200+GP 1,800
33.	Painter	9	5,200-20,200+GP 1,900
34.	Watchman	5	5,200-20,200+GP 1,800
35.	Workman/Helper	20	5,200-20,200+GP 1,800
36.	Woman Worker/Sweeper	4	5,200-20,200+GP 1,800

1	2	3	4
37. Driver (Heavy)	3	5,200-20,200+GP	1,900
38. Driver (Light)	3	5,200-20,200+GP	1,900
Total	159		

Grand Total 43+434+159 = 636

By order and in the name of the Governor of Goa.

Capt. *James Braganza*, Captain of Ports & ex officio Joint Secretary.

Betim, 28th November, 2011.

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Department of Social Welfare
Directorate of Social Welfare

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Order

No. 3-32-2006-ADMN/6393

On the recommendation of the Departmental Promotional Committee as conveyed by the Goa Public Service Commission vide their letter No. COM/II/11/44(1)2011/235 dated 8-11-2011, Shri Santano Fernandes, Assistant Director (Welfare of the Differently Aabled) in the Directorate of Social Welfare is hereby promoted on regular basis to the post of Deputy Director (Social Welfare), Group "A", Gazetted in the pay scale of ` 9,300-34,800+Grade Pay ` 5,400/- with immediate effect.

2. The above Officer shall exercise option for fixation of his pay in the promotional grade, in terms of provisions of FR 22(1)(a)(1) within a period of one month from the date of his promotion as Dy. Director (Social Welfare). The option once exercise shall be final.

3. He shall be on probation for a period of 2 years.

4. The expenditure towards pay and allowances of the Officer shall be debited to the following Budget Head:

2235-Social Security and Welfare; 02-Social Welfare; 001-Direction & Administration; 01-Directorate of Social Welfare (Non-Plan); 01-Salaries.

By order and in the name of the Governor of Goa.

N. B. Narvekar, Director & ex officio Joint Secretary (Social Welfare).

Panaji, 16th November, 2011.

Department of Town & Country Planning

—
Order

Ref. No. 4-5-2-84-UDD/pt/TCP/11/4768

Government is pleased to direct Shri Rajesh Naik, Member Secretary, South Goa Planning & Development Authority to hold the charge of Member Secretary, Ponda Planning & Development Authority as an additional charge, in addition to his own duties, till further order.

This is issued with the approval of the Government vide Note bearing No. 4-5-2-84-UDD/pt/TCP/11/4606 dated 11-11-2011.

By order and in the name of the Governor of Goa.

S. T. Puttaraju, Chief Town Planner & ex officio Joint Secretary.

Panaji, 22nd November, 2011.

Order

Ref. No. 1/6-1/TCP/2011/4803

Read: GPSC letter No. COM/II/11/50(2)92/1320 dated 8-11-2011.

On recommendation of the GPSC, the Government is pleased to extend the ad hoc appointment of the Town Planners for the period of two years w.e.f. 1-1-2010 to 31-12-2011. The officers indicated hereinbelow shall hold the posts of Town Planners on ad hoc basis for the period indicated above.

1. Shri Rajesh Naik, Town Planner (ad hoc).
2. Shri Ranjit M. Borkar, Town Planner (ad hoc).
3. Shri Antonio P. Diniz, Town Planner (ad hoc).
4. Ms. Vertika Dagur, Town Planner (ad hoc).
5. Shri Rajindar Kumar Pandita, Town Planner (ad hoc).

This is issued with the approval of Goa Public Service Commission vide letter No. COM/II/11/50(2)92/1320 dated 8-11-2011 and approval of the Government vide No. Note 1/6-1/TCP/2011/4557 dated 9-11-2011.

By order and in the name of the Governor of Goa.

S. T. Puttaraju, Chief Town Planner & ex officio Joint Secretary.

Panaji, 25th November, 2011.

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